2019 INSC 680

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4862 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (C) NO.20 OF 2018)

STATE OF BIHAR & ORS. …Appellants

VERSUS

THE BIHAR SECONDARY TEACHERS STRUGGLE COMMITTEE, MUNGER & ORS. …Respondents

WITH

CIVIL APPEAL NO. 4872 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.708 OF 2018)

CIVIL APPEAL NO. 4867 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.238 OF 2018)

CIVIL APPEAL NO. 4866 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.242 OF 2018)

CIVIL APPEAL NO. 4864 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.169 OF 2018)

CIVIL APPEAL NO. 4865 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.162 OF 2018)

CIVIL APPEAL NO. 4869 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.254 OF 2018)

CIVIL APPEAL NO. 4863 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.164 OF 2018)

CIVIL APPEAL NO. 4868 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.251 OF 2018)

CIVIL APPEAL NO. 4870 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.240 OF 2018)

CIVIL APPEAL NO. 4871 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.572 OF 2018)

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted.

2. These appeals are directed against common judgment and order dated 31.10.2017 passed by the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No.21199 of 2013 and all connected matters.

3. In 1981, all non-Government Secondary Schools were nationalized and the management was taken over by State of Bihar. Consequently, all teaching and non-teaching staff were given salaries and emoluments at the Government scales. With the schemes like Sarva Shiksha Abhiyan, introduction of Article 21A in the Constitution and coming into force of the Right of Children to Free and Compulsory

Education Act, 2009 ('RTE Act', for short), the State was required to induct large number of teachers in order to meet the required obligations. These teachers employed at Panchayat, Nagar Panchayat and Municipal levels were not given same salaries and emoluments like the teachers who were paid at the Government scales. The petitions seeking same salaries and emoluments on the principle of "equal pay for equal work" filed by the latter category of teachers, were allowed by the High Court. The view taken by the High Court is presently under challenge at the instance of the State.

4. By the Bihar non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 ('1981 Act', for short), management and control of non-Government Secondary Schools were taken over by the State. In terms of Section 3, all non-Government Secondary Schools other than Minority Secondary Schools based on religion or language and Centrally sponsored, autonomous and proprietary schools were taken over by the State Government w.e.f. 02.10.1980. Consequently, every Head Master, Teacher and other employees of such school became employees of the State Government, with Management and Control of all the nationalized schools vesting in the Director of Education of State Government (In charge of Secondary education). Section 10 dealt with

establishment of School Service Board which was entrusted with the power of appointment of Teachers, Head Masters in nationalized schools and the Board would make recommendations for appointment of teachers and for appointment or promotion of Head Masters of nationalized secondary schools. The District Secondary Education Fund was constituted under Section 11 and the application of the fund under Section 12 would *inter alia* be for payment of salaries and allowances of the Head Master, Teachers and other staff of the secondary schools.

5. Bihar Nationalized Secondary Schools (Service Conditions) Rules, 1983 were framed by the State Government in exercise of powers conferred under Sections 9 & 15 of the 1981 Act. Under these Rules the service conditions were prescribed for Head Master, Teachers of superior category, teachers of inferior category and teachers of junior category as well as in respect of non-teaching employees such as clerks, peons etc. These Rules prescribed minimum qualifications for each of those categories. The Rules also dealt with subjects such as procedure for appointment, permission, and disciplinary action. Rule 6 dealt with cadre of teachers and was to the following effect:

> "6. Cadre of teachers:-

> 1. There shall be Dist. Cadre of junior category teachers, of whose controlling officer shall be Dist. Education Officer.
>
> 2. There shall be Commissionaire Cadre of the teachers of inferior and superior category of whose controlling officer shall be Regional Director.
>
> 3. There shall be State Cadre of Headmaster whose controlling officer shall be Director."

6. By the Constitution (73rd amendment) Act, 1992 Part IX (containing Articles 243, 243A to 243-O) was inserted in the Constitution. Article 243B mandates that in every State there shall be constituted Panchayats at the village, intermediate and district levels in accordance with Part IX of the Constitution Article 243G is to the following effect:-

> **"243G Powers, authority and responsibilities of Panchayats**. – Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to –
>
> (a) the preparation of plans for economic development and social justice;
>
> (b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

One of the matters listed in the Eleventh Schedule under Serial No.17 is "Education, including primary and secondary schools".

7. By the Constitution (74th Amendment Act, 1992) Part IXA (containing Articles 243P to 243Z, 243ZA to 243ZG) was inserted in the Constitution. In terms of Article 243Q there shall be constituted in every State, a Nagar panchayat for a transitional area, a municipal council for a small urban area and a municipal corporation for a larger urban area in accordance with the provisions of said Part IXA of the Constitution. Article 243W dealing with powers, authority and responsibilities of Municipalities etc. is as under:

> **"243W. Powers, authority and responsibilities of Municipalities, etc. –** Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow –
>
> "(a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to –
>
> (i) the preparation of plans for economic development and social justice;
>
> (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
>
> (b) the Committees with such powers and authority as may be necessary to enable them to carry out the

> responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

One of the matters mentioned in the Twelfth Schedule at Serial No.13 states, "Promotion of cultural, educational and aesthetic aspects".

8. By the Constitution (86th Amendment Act, 2002) which came into effect on 01.04.2010, Article 21A dealing with right to education was inserted in the Constitution. Said Article 21A reads as under:-

> "21A. Right to education. – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

9. By Bihar Act 25 of 2006, 1981 Act was amended. Section 2 of the Amending Act was as under:

> "Amendment of Section 10 of the Act, 1981 (Bihar Act 33, 1982) – The Words "The recommendation for the appointment to Posts of teachers in nationalized Schools shall be sent to the Director, Secondary Education Department by the Bihar Staff Selection Commission used in Section 10 as substituted by Bihar Act 14, 2004 are hereby deleted."

The role of the Director in matters concerning appointments to the posts of teachers in nationalised schools was thus done away with.

10. In May 2006, two draft Notes for approval of the Cabinet were prepared. The Notes dealt with issues like requirements to increase the

number of teachers to reach the national level of teacher to students' ratio and to meet the goals set by the provisions of Article 21A of the Constitution. Some of the relevant portions of the Notes were:-

> "As per the provisions of Article 21A of the Constitution of India, imparting of free Education to the childrens' of age group of 6-14 has become their fundamental rights. This is the responsibility of the State to provide quality education keeping in mind the equality and social justice. At present in Government schools ratio of teachers and student is1:62. Whereas as per the national Educational policy and in light of standard fixed at national level, for the purposes of imparting quality education, this ratio should be 1:40. There are 64:391 posts vacant for the trained teachers and around 24 Lakhs childrens are not even registered in the schools. Due to lack of teachers, school and classes childrens in huge numbers are compelled to leave the school even prior to completing their education up to 8 years. This year there is scheme for consolidated development of 15000 new primary schools and around 24,000 existing schools. At present education is being imparted to the childrens at "Shiksha Kendras" with the help of instructors. It is thought in light of equality and social justice that they be also provide education in fully developed schools with the help of teachers."

> "9. In new rules basic changes are being made in salary of the trained teachers and in their appointment procedure. They will be provided fixed salary of Rs.5000/- per month and on the basis of their evaluation, in a situation of them being successful, in each three years, an increment of Rs.500/- per month shall be given. Appointment shall be decentralized. At the Block levels, it shall be provided under the panchayati Raj arrangements on the basis of merit list.
>
> In Gramin area they shall be called as "Panchayat teachers" and in Urban area they will be called "Nagar teachers".
>
> It is expected that in this new scheme of things and on fixed salary/stipend generally locals will be appointed on the post of teachers and amount which shall be saved

consequent to expenses of providing of present full salary, could be available for the purposes of extension of primary education and for the purposes of enhancement of its quality.

10. New rule shall not have any effect in salary of the teachers and in terms and condition of their appointments made earlier. But their vacant posts shall be omitted and same number of posts shall be created under the new arrangements/Rules and appointment on it shall be made under the new rules. Same arrangement/procedure shall follow in the vacancies falling in future.

Under these provisions, Panchayat Raj institutions are being provided with the power of appointment of new teachers, payment of salary and other terms and conditions of service as per the proposed new Rules of appointment. Movable/Immovable Property of the schools, training of teachers, construction of building of school, construction of syllabus of study/study material, construction of book, evaluation etc all the works shall be under the state Government like in past."

... ...

"5. Difficulties in previous appointment procedure:- In the centralized examination test as adopted earlier has following difficulties in selection and appointment of teachers.

i. Previous experience shows that in organizing and evaluating of such examinations so many hurdles are faced and in entire appointment process, it takes a lot of time.

ii. If selection is done in a centralized way, there is possibility of participation of candidates from other states too and a practical difficulty would come in, verification of eligibility certificates etc.

iii. After centralized selection process, a practical difficulty would be faced in transfer and posting etc and candidates would also suffer.

6. Proposed process of employment:- While considering the above said facts/aspects, proposal is that procedure of appointment of Secondary and higher Secondary teachers

> is decentralized and in light of 73rd and 74th amendment of the Constitution of India, its responsibility be given to the Panchayati Raj Sansthan's/bodies. Movable and immovable property of school, Training of teachers, construction of school building, syllabus/study materials, construction of study materials, evaluation etc, shall be under the control of state Government like in past."
>
> … … …
>
> "8. Under the above said process, if payment is made at the rate of Rs.6000/- per teacher (Six thousand only) financial implication would be Rs.89,82,72,000/- (Eighty nine crores eighty two lakhs seventy two thousand only) which would be required to be incurred. If appointment is made on all these posts under the present procedure, total amount of Rs.160,83,56,016 (rupees one hundred sixty crores eighty three lakhs fifty six thousand sixteen rupees only) is estimated required to be spent. In this manner if appointment of teachers of secondary schools are done under the new proposed Rules, total amount of Rs.71,00,84,016 (Seventy one crores, eighty four thousand sixteen rupees only) shall be saved. From this saved amount, on fixed salary total 10,000 posts of teachers could be created. From these created posts, for the purposes of extension of secondary education in the state, following schemes shall be floated by the Department of Human Resources Development."

11. Thereafter, Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 came into effect on 01.07.2006. The opening recitals of said Rules stated:

> "In the exercise of the powers conferred by provision of Article 243-G (11th schedule section no.17) of the Constitution of India and Article-47 and 48 read with Article 146 of Bihar Panchayat Raj Act-2006, the State Government is pleased to make the following rules for employment of teachers in the Elementary schools of rural areas of the state.
>
> Rules:
>
> The Elementary education for the children between 6-14 years of age, has become their fundamental Right under

the Article 21(A) of the Constitution of India. For this it has become necessary to adopt the comprehensive programmes for improvement and expansion of Elementary education (system). It is required to open thousands of new elementary schools and employment of teachers in large number. It has also become necessary to handover the responsibility of elementary Education to Panchayat Raj Institutions considering their important roles in Elementary Education in the light of 73rd and 74th amendments of the constitution. Consequently, to achieve the above goal, this rule is being made for the employment of teachers in elementary schools."

Rules 3 and 4 of said Rules were to the following effect:

"3. Grade of Panchayat Elementary Teacher- There will be two grades of Panchayat Elementary Teachers:-

(A) Block Teacher (Those teachers including physical Education Teachers employed at block level.)

(B) "Panchayat Teachers" (Teachers employed at Panchayat level).

4. Employment of Panchayat Elementary Teachers-

(1) Block Teachers will be employed in Middle schools by Panchayat samiti and Panchayat teachers will be employed in primary schools by Gram Panchayat.

(2) Category wise panel at both above mentioned level will be prepared separately for trained and untrained candidates. At first trained teachers will be employed. Thereafter if posts remain vacant, untrained teachers may be employed. Thereafter if posts remain vacant, untrained teachers may be employed and arrangement will be made for imparting two years teachers training to them.

(3) In reserved category if higher secondary/intermediate passed candidates would not be available, secondary examination (Matriculation) passed candidates may be employed. But it will be necessary for them to acquire prescribed qualification within maximum six years."

Rule 9 dealt with "process of employment" and stated that the vacant posts would be advertised within the block/panchayat, whereafter application forms from interested candidates would be received by Block Education Extension Officer for Block Teachers and by the Secretary of Gram Panchayats from Panchayat Teachers. Sub-Rule 7 of Rule 9 dealt with constitution and approval of Committee for preparation of panel as under:-

> "7. Constitution and Approval of Committee for preparation of panel:
> Panel will be prepared on the basis of application forms obtained by the following Committee:

(A) **For Block teacher and physical Teacher:-**

(i) Pramukh of Panchayat samiti-Chairman
(ii) Executive Officer panchayat Samiti - Member.
(iii) One member elected by education committee of Panchayat Samiti. (if parmukhe is male member, the elected member Executive shall be a female)
(iv) Block Education Extension Officer – Member Secretary

(B) **For Panchayat teacher:**

(i) Mukhiya of Gram Panchayat – Chairman

(ii) One member elected by Education Committee of Gram Panchayat case Mukhiya is a male, the elected member will be female -Member.

(iii) The member of Panchayat samiti whose area covers most of the area Panchayat – Member

(iv) One teacher from the secondary school either from to the panchayat nearer to the panchayat nominated by the D.E.O. – Member.

(v) Secretary Gram Panchayat – Member Secretary.

But the term of the elected members of both the above committees will of one year.
Note: - In case of (non-existence) non-constituent of the Education Committee of panchayat samiti and Gram panchayat, one member of panchayat samiti/gram Panchyat nominated by the Block Education Extension officer, will be a member of the Committee.

(vi) After preparation, the panel will be published or make available to the public one-week time will be given for their objection/grievances. Resolving the grievances obtained, panel will be finalised.

(vii) Panel prepared for employment of Block teachers and panchayat teacher will be approved by panchayat samiti and Gram panchayat respectively.

(viii) Selected members will be employed in their willing schools through counselling by the above committees in descending order of the preference mentioned in Anusuchi-II from the panel prepared on the basis of merit.

(ix) Employment letter will be given to the selected candidate (Anusuchi-III)

(x) Their joining will be accepted on the basis of their consent letter."

In terms of Rule 12, trained Block Teachers and Panchayat Teachers as well as untrained Block Teachers and Panchayat Teachers were to be employed on fixed pay and the trained Block Teachers and Panchayat Teachers would be entitled to an increase in their fixed pay by Rs.500/- every three years, while untrained block teachers and panchayat teachers would be entitled to increment of Rs.300/- every three years. Under Rule 13 the posts were non-transferable. Under Rule 20 dealing with Repeal and Savings it was stated that Panchayat Shiksha Mitras

employed under previous circulars, orders, instructions were deemed to be employed as panchayat teachers under these Rules.

12. On 11.07.2006, two sets of Rules were framed by the State. First, dealing with subject of appointment of teachers in Government Nationalized Secondary Schools in the *Urban* Areas of the States while the second set dealt with the subject of appointment of teachers in Government Nationalized Secondary Schools in *Rural* areas of the State. The opening recitals in respect of both the sets of Rules were identical and were to the following effect:-

> "The State Government has taken a policy decision for the expansion and strengthening of the Secondary and Higher Secondary Schools of the state. At present, it is necessary to fill up a large number of vacancies of the teachers. Apart from this, more schools and teachers are also needed. It has been decided to organize + 2 level of higher secondary schools under 10 + 2 + 3 pattern in accordance with the National Education Policy, 1986/1992. As per the 73rd and 74th Amendment of the Constitution, the Government has decided, to decentralize the appointment of the teachers of the Secondary and Higher Secondary Schools and to entrust the responsibility of the appointment of teachers of Secondary Schools to the Panchayati Raj Institutions. These rules are being made to achieve this aim under special planning for the appointment of teachers in the Secondary Schools."

A) The First set of Rules were called the Bihar Municipal Body Secondary and Higher Secondary Teachers (Employment and Service Conditions) Rules 2006. Rule 4 dealt with the subject of eligibility for

appointment to the posts of Municipal Secondary Teachers under Part A while Part B dealt with similar issues as regards Municipal Higher Secondary Teachers. The procedure for employment was dealt with in Rule 6, according to which the information of subject-wise vacant posts of teachers in Government Nationalized Secondary Schools situated in Municipal areas would be advertised in that area. Sub-Rule (6) of Rule 6 dealt with Constitution of Committees for preparation of panels in respect of Municipal Panchayat/Municipal board and for Municipal Corporations as under:

> "Constitution of Committee for the preparation of panel and its approval-
>
> On the basis of received applications, the following committee shall prepare the panel:
>
> (a) Committee for Municipal Panchayat/Municipal Board

1.	Chairman of Municipal Panchayat /Municipal Board	President
2.	One selected Member of Education Committee of Municipal panchayat/ Municipal board (In case of male president, the selected member shall be female)	Member
3.	Executive Officer of Municipal Panchayat/ Municipal Board	Member
4.	Concerned Sub-divisional Officer	Member Secretary

> If Scheduled Caste/Scheduled Tribe are not there in the aforesaid committee, then the District Welfare Officer shall be the additional member of the Committee.

But the tenure of the member selected by the Education Committee of Municipal Panchayat/Municipal Board shall be of 1 year.

Note: - In case of non-constitution of the education committee of Municipal Panchayat/Municipal Board, one officer of the district level shall be nominated by the executive officer of the Municipal Panchayat/Municipal Board.

(b) Committee for the Municipal Corporation

1.	Mayor of Municipal Corporation	President
2.	One selected member of Education Committee of Municipal Corporation (In case of male president, the selected member shall be female)	Member
3.	Executive Officer of Municipal Corporation	Member
4	Concerned District Education Officer	Member Secretary

If Scheduled Caste/Scheduled Tribe are not there in the aforesaid committee, then the District Welfare Officer shall be the additional member of the Committee.

But the tenure of the member selected by the Education Committee of Municipal Corporation shall be of 1 year.
Note: In case of non-constitution of the education committee of Municipal Corporation an officer of the district level shall be nominated by the Chief Officer of the Municipal Corporation."

In terms of Rule 8, Municipal Secondary Teachers, trained and untrained, would be entitled to fixed salary every month and also increase of Rs.600 per month and Rs.500 per month respectively on completion of 3 years. Similarly, salary of Municipal Higher Secondary Teachers, trained and untrained, was also a fixed salary with increase of Rs.700 per month and Rs.600 per month for trained and untrained categories on competition of 3 years. Under Rule 10, the posts of Municipal Secondary

and Higher Secondary Teachers were normally not transferable, but after completion of three years, the teachers could avail the facility of maximum two transfers within the jurisdiction of the Municipal Body. Rule 16(2) was to the following effect:-

> These Rules shall not affect the salary and service conditions of the teachers of Government, Nationalised Secondary and Higher Secondary Schools appointed under the provisions of the previous Rules."

B) The Second set of Rules were called the Bihar District Board Secondary and Higher Secondary Teachers (Employment and Service Conditions) Rules, 2006. Rule 4 dealt with the subject of eligibility for appointment to the posts of District Board Secondary Teachers under Part-A while Part-B dealt with similar issues as regards District Board Higher Secondary Teachers. The procedure for employment was dealt with in Rule 6, according to which the information of subject-wise vacant posts in Government nationalized secondary schools situated in the District Board areas would be advertised in the District. Sub-Rule (6) of said Rule 6 dealt with constitution of Committees for the preparation of panels in respect of District Boards as under:-

> "vi. Constitution of Committee for the preparation of panel and its approval-
>
> On the basis of received applications, the following Committee shall prepare the panel:

a	Chairman of District Board	President

b	One selected Member of Education Committee of District Board (In case of male President, the selected member shall be female)	Member
C	Deputy Development Commissioner	Member
d	District Education Officer	Member Secretary

If Scheduled Caste/ Scheduled Tribes are not there in the aforesaid committee, then the District Welfare Officer shall be the additional member of the committee.

But the tenure of the member selected by the Education Committee of District Board shall be of 1 year.

Note:- In case of non-constitution of the education committee of District Board, one officer of the district level shall be nominated by the Deputy Development Commissioner."

In terms of Rule 8, District Secondary Teachers, trained and untrained, would be entitled to fixed salary every month and also an increase of Rs.600/- per month and Rs.500/- per month respectively on completion of three years. Similarly, the District Board Higher Secondary Teachers, trained and untrained, would also be entitled to a fixed salary with increase of Rs.700/- per month and Rs.600/- per month respectively for trained and untrained categories on completion of three years. Under Rule 10, the posts of District Board Secondary and District Board Higher Secondary Teachers were normally non-transferable, but on completion of three years, the teachers could avail the facility of maximum two transfers within the jurisdiction of the District Board. Rule 16(2) was as under:-

"These Rules shall not affect the salary and service conditions of the teachers of Government, Nationalised

> Secondary and Higher Secondary Schools appointed under the provisions of the previous Rules."

13. Thus, three sets of Rules came into effect in July, 2006. Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 dealing with elementary teachers come into force on 01.07.2006; Bihar Municipal Body Secondary and Higher Education Teachers (Employment and Service Conditions) Rules, 2006 dealing with teachers employed in secondary and higher secondary teachers in *urban* areas came into effect on 11.7.2006. Bihar District Board Secondary Higher Secondary Teachers (Employment and Service Conditions) Rules, 2006 dealing with secondary and higher secondary teachers in *rural* areas also came into effect on 11.7.2006. These three sets of Rules, for facility, are hereinafter referred to as '2006 Rules' and the teachers appointed in terms of said Rules, again for facility, are referred to as 'Niyojit Teachers', which expression appears in all official circulars and resolutions.

After the framing of Rules of 2006, the appointments to the posts of teachers in *urban* as well as *rural* areas in respect of nationalized schools in the State were made on the basis of said Rules of 2006. The service conditions and emoluments payable to those teachers were governed under the provisions of the respective sets of 2006 Rules as aforesaid.

The emoluments payable to those teachers were, however, lower than the emoluments paid to all the teachers who were appointed before said Rules of 2006 had come into force. Thus, there were two categories of teachers, the first being those teachers who upon nationalization continued or were appointed in all Government schools before 2006 and the second category was all the teachers appointed under 2006 Rules. The First category i.e. regular Government Teachers were entitled to a pay-scale and certain emoluments, whereas the Second category of teachers were appointed by Local Authorities on a fixed salary.

It was, however, the policy decision of the State that post 2006 there would not be any fresh regular appointments in the First category and all regular appointments post 2006 would be only in terms of 2006 Rules i.e. in the Second category. There is, however, an exception under which certain teachers were appointed under the First category even after 2006 which will be dealt with hereafter. Barring such exception, the policy decision had been that no fresh appointments be made in the First category and that the First category would be treated as a dying or vanishing cadre.

-

14. The RTE Act enacted by the Parliament to provide for free and compulsory education to all children in the age bracket of 6 to 14 years, came into force on 01.04.2010.

A. Sections 2 (a), (f) and (n) which define terms 'appropriate Government', 'elementary education' and 'school' are as under:-

> "2. Definitions.- In this Act, unless the context otherwise requires, -
>
> (a) "appropriate Government" means –
>
> (i) In relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;
>
> (ii) In relation to a school, other than the school referred to in sub-clause (i), established within the territory of –
>
> (A) A State, the State Government;
>
> (B) A Union Territory having legislature, the Government of that Union territory;
>
> … … …
>
> (f) "elementary education" means the education from first class to eighth class;
>
> … … …
>
> (n) "school" means any recognised school imparting elementary education and includes –
>
> (i) a school established, owned or controlled by the appropriate Government or a local authority;
>
> (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;"

B. Chapter III of the Act deals with "Duties of Appropriate Government, Local Authority and Parents" and Sections 6 and 7 appearing in this Chapter are as under:-

"6. Duty of appropriate Government and local authority to establish school. – For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.

7. Sharing of financial and other responsibilities. – (1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State

> Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.
>
> (6) The Central Government shall-
>
> > (a) develop a framework of national curriculum with the help of academic authority specified under Section 29;
> >
> > (b) develop and enforce standards for training of teachers;
> >
> > (c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building."

C. Chapter IV deals with "Responsibilities of Schools and Teachers" and Sections 23 and 25 deal with issues such as qualifications and conditions of service of teachers as well as Pupil-Teacher Ratio as under:

> "**23. Qualifications for appointment and terms and conditions of service of teachers. –**
>
> (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.
>
> (2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:
>
> Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

> Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.
>
> (3) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed.
>
> … … …
>
> **25. Pupil-Teacher Ratio. –** (1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.
>
> (2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27."

D. Section 35 empowers the Central Government to issue directions while Section 38 empowers appropriate Government to make rules. In exercise of powers conferred by Section 38 of the RTE Act, the Central Government made "The Right of Children to Free and Compulsory Education Rules, 2010" (hereinafter referred to as "2010 Rules"), which came into effect on 8.4.2010. Part VI of 2010 Rules deals with topic 'Teachers' and Rule 20 appearing in said Part VI is as under:-

> "**20. Salary and allowances and conditions of service of teachers. –** (1) The Central Government or the appropriate Government or the local authority, as the case may be, shall notify terms and conditions of service and salary and allowances of teachers of schools owned and managed by

> them in order to create a professional and permanent cadre of teachers.
>
> (2) In particular and without prejudice to sub-rule (1), the terms and conditions of service shall take into account the following, namely:-
>
> (a) accountability of teachers to the School Management Committee;
>
> (b) provisions enabling long-term stake of teachers in the teaching profession.
>
> (3) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of teachers shall be at par for similar qualification, work and experience."

15. In exercise of powers conferred by Section 38 of the RTE Act, State of Bihar made, The Bihar State Free and Compulsory Education of Children Rules, 2011. The concept of neighbourhood was dealt with in Rule 2(1)(k) and Rule 4 speaking about establishment of a primary school within 1 km of all habitations was as under:-

> "4. (1) the areas or limits of neighbourhood within which a school has to be established by the State Government shall be as under –
>
> (a) A primary school has to be established within a limit of 1(one) km. of all habitations, where number of children between the ages of 6-14 years are at least 40 (forty):
>
> (b) An elementary school has to be established within a limit of 3 (three) km. of any habitation:
>
> (2) wherever required, the State Government shall upgrade a primary school to elementary school.
>
> (3) In places with difficult terrain, risk of floods, landslides, erosion, lack of roads and in general, danger

> for young children in the approach from their homes to the school, the State Government or the local authority may consider to locate the school in such a manner as to avoid such dangers, by relaxing the limits specified under sub rule (1) of rule 4.
>
> (4) For children from very small habitations as identified by the State Government/Local Authority, where no school exists within the area or limits of neighbourhood specified under Sub-Rule (1) above, the State Government/Local Authority shall make adequate arrangements, such as free transportation, residential facilities and other facilities, for providing elementary education.
>
> (5) In areas with high population density, the State Government/local authority may consider establishment of more than one neighbourhood school, having regard to the number of Children in the age group of 6-14 years in such areas.
>
> (6) The Local Authority shall identify the neighbourhood school(s) where children can easily be admitted and made such information public for each habitation within its jurisdiction.
>
> (7) In respect of children with disabilities, which prevent them from accessing the school the State Government/Local Authority will endeavour to make appropriate and safe transportation arrangements for them to attend school and complete elementary education.
>
> (8) The State Government/Local Authority shall ensure that access of children to the School is not hindered by social and cultural factors."

Part 6 of the Rules dealt with "minimum qualifications of teachers for the purpose of sub section (1) of Section 23 of the Act and Rule 17 was as under:-

> "**Salary, allowances and conditions of service of teachers for the purpose of sub-Section (3) of Section 23 of the Act**

> 17. (1) The State Government shall notify salary, allowances and conditions of service for creation of a professional and permanent cadre of teachers.
>
> (2) Following points shall be taken into consideration without prejudice for sub-rule (1) and especially for the determination of conditions of service:-
>
> (a) The teachers should be accountable to the school education committee constituted under Section 21 of the Act.
>
> (b) The provision of creation of favourable conditions for teachers to stay in teaching profession for long period."

16. Soon thereafter Bihar Panchayat Elementary Teachers (Employment and Services Conditions) Rules, 2012 came into force on 03.04.2012. The terms Primary School, Middle School and Elementary School by defining Rules 2 (i)(ii)(iii) respectively as under:-

> "(i) "**Primary school**" means the government or government taken-over schools where at present education is provided upto class-V level.
>
> (ii) "**Middle school**" means government/government taken over schools where at present education is provided upto class VIII level.
>
> (iii)"**Elementary school**" means government/ government taken over primary and Middle schools."

Rule 5 prescribed minimum qualifications for employment in respect of teachers for classes I to V and classes VI to VIII. Rule 15 dealt with consolidated pay of the teachers as under:-

> "**15. Service Conditions of Niyojit teachers.-**(a) **Consolidated Pay.-**(i) the Panchayat elementary teachers will get the consolidated pay as follows:-
>
> - Trained teachers (basic grade) -7000/- per month
> - Untrained teachers (basic grade) -6000/- per month
> - Trained teachers (Graduate grade) -8000/-per month
> - Untrained teachers (Graduate grade) -7500/- per month
> - Trained teachers (H.M. Middle School) -14000/- per month
>
> (ii) The instructors will get 4000/- consolidated pay per month.
>
> (iii) If in future, the state government takes a decision to revise their consolidated pay, they will get the pay accordingly.
>
> (iv) No other allowances like dearness allowance, house rent allowance, medical allowances, transport allowance etc. will be given to the Panchayat elementary teachers and instructors employed under these rules."

Sub rule (b) then dealt with pay increase and stated that the evaluation ("efficiency test") of Niyojit Teachers as directed by the Government according to Employment Rules, 2006 would be undertaken and based on evaluation, the trained teachers securing 45% in general category and 40% in reserved category would get an increase of Rs.500 in their consolidated pay while untrained teachers wold get increase of Rs.300/- in their fixed pay after three years.

Sub rule (f) dealt with "Promotion" and clause 3 thereafter stated that the promotion to the post of headmaster in fixed pay of middle schools

would be given from the seniority list of graduate trained teachers and from the seniority list of teachers having at least 5 years of minimum satisfactory service in graduate grade at block level.

Similar provisions for teachers working in urban areas were made by the Bihar Nagar Elementary Teachers (Employment and Service Conditions) Rules, 2012.

17. Though after the enforcement of 2006 Rules, the regular cadre of Government Teachers was to be taken as a dying or vanishing cadre and fresh appointments were to be made only in terms of 2006 Rules on fixed pay and power appointment was vested with Panchayati Raj Institutions, there was an exception and some Assistant Teachers in regular pay scale as Government Teachers in secondary schools came to be appointed in the year 2013 in following circumstances.

Sometime in December 2003, an advertisement was issued by the State to fill up the posts of Assistant teachers. However, certain irregularities were found in the preparation of panels during selection process. Therefore, orders were issued for cancellation of panels. A challenge was raised by some candidates and the High Court directed the State to recalculate the vacancies and to go ahead with the process of

selection. Special Leave Petition No.22882 of 2004 filed in this Court by the State was withdrawn. Thereafter, the State attempted to fill the vacancies in terms of 2006 Rules which led to the filing of Contempt Petition No.297 of 2007 in this Court. By order dated 9.12.2009, this Court directed the State Government to fill up 34540 posts of Assistant teachers as per advertisement published in December 2003 as one time appointment.

The Bihar Special Primary Teachers Appointment Rules, 2010 were therefore framed. These Rules were to deal with exceptional situation which was styled as "One Time Appointment." Accordingly, 34540 teachers were appointed in 2013 as Government Teachers on regular pay scales. The developments including the difficulty expressed by the State in accommodating teachers because of change in policy were dealt with by this Court in *Nand Kishore Ojha v. Anjani Kumar Singh*[1] as under:-

> "1. Contempt Petition (C) No. 297 of 2007, filed in SLP (C) No. 22882 of 2004, arose out of an alleged breach of undertaking said to have been given on 18-1-2006 by the State of Bihar and the order passed on the basis thereof on 23-1-2006 by this Court in *State of Bihar* v. *Nand Kishor Ojha* (2014 11 SCC 404) As we have indicated in our order dated 9-1-2009, a number of writ petitions had been filed against the State of Bihar, raising issues relating to recruitment of teachers in primary schools. At one stage, it was brought to our notice that on account of changes in the policy, trained teachers who were in place at the time when the undertakings were given, could not be accommodated. Accordingly, we had passed orders directing that the trained teachers who at one time were

1 (2014) 11 SCC 405

> less than the number of vacant posts, should be given appointment in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement which had been published for recruitment of primary school teachers and took the number of available vacancies to be 34,540.
>
> **2.** We had directed that the said vacancies be filled up with the said number of trained teachers as a one-time measure to give effect to the undertakings which had been given on 18-1-2006 and 23-1-2006. Accordingly, without issuing a rule of contempt, we had directed that the said vacancies be filled up from amongst the trained teachers who are available in order of seniority. Subsequently, however, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and some of the institutions from which they alleged to have received their training."

As a result, 34,540 primary school teachers came to be appointed in the year 2012-13. These teachers though appointed after 2006 were not appointed in terms of 2006 Rules but Special Recruitment Rules called 2013 Rules were formulated.

18. An association of teachers called Parivartankari Prarambhik Shikshak Sangh approached the High Court by filing Civil Writ Jurisdiction Case No.7089 of 2013 contending that the Panchayat elementary teachers were entitled, under the principle of "equal pay for equal work", to same pay-scales which were being given to the teachers appointed under the State Government. The matter was contested and the

Single Judge of the High Court dismissed said Writ Petition by his judgment and order dated 5.4.2013. It was observed:-

> "Here is a case where the State as a matter of policy came up with a scheme of mass employment at grass root level at the Panchayats to ensure that sufficient teachers are available at the local level so that children who have no ready access to education also have such opportunity. In the aforesaid background, as far as the State exchequer is concerned, the policy/scheme was in accordance with the burden it could bear for such recruitment under which the members of the petitioner's society have been appointed. That being the case, it is entirely at the discretion of the State Government to decide the service conditions including pay-scale for persons appointed under the aforesaid Rules. The Court would not substitute is own views or force the State to make payment from the public exchequer as it is the State which is also accountable for such expenditure and has to justify such payment.
>
> If the State Government has framed a policy/scheme for evolving a way of balancing between the requirement of teachers and the financial liability together with devolution of power to the Panchayats, the Court would not interfere and disturb the equilibrium."

19. Around this time, several other writ petitions were filed, being aggrieved by the differential treatment, where the Niyojit Teachers appointed under Rules of 2006 were not been given the same pay-scales and were differentially treated. These petitions highlighted denial of concept of "equal pay for equal work" and challenged the validity of relevant provisions of 2006 Rules. The matters were taken up by the Division Bench of the High Court, the lead matter being CWJC 21199 of 2013 filed by the Bihar Secondary Teachers Struggle Committee, Munger.

20. In response, the stand of the State was that there were differences between two categories of teachers. In supplementary counter affidavit filed by the Director, Secondary Education, the difference was projected as under:-

> "13. That the comparative difference between the aforesaid two categories of teachers is more apparent from the tabular chart prepared hereinafter:-

Sl. No.	Head	Earlier District Cadre Teacher	Niyojit Teacher
1.	Cadre	District/Division	Respective Panchayat, Block, Nagar Panchayat, Nagar Parishad, Nagar Nigam or Zila Parishad, as the case may be.
2.	Status	Employee of State Government	Employee of respective institution of Panchayati Raj Institution/Urban Local bodies/Zila Parishad
3.	Nature of Cadre	Dying/diminishing cadre	To continue
4.	Nomenclature of post	Assistant Teacher	Panchayat Teacher/Prakhand Teacher/ Nagar Teacher/Zila Parishad Madhyamic Teacher/Nagar Parishad Madhyamic Teacher/Zila Parishad Uchhtar Madhyamic Teacher/Nagar Parishad Uchttar Madhyamic Teacher
5.	Appointing Authority	District Superintendent of Education now District Education Officer/Director, Secondary Education	Respective PRI's/Urban Local Bodies/Zila Parishad
6.	Mode of	BPSC based on competitive	Based on Marks obtained in academic course and

	Recruitment	examination/Erstwhile Vidyalaya Seva Board	training course
7.	Rules	Bihar Elementary Schools Teachers Appointment Rules, 1991 as amended AND Bihar Secondary Schools Teachers Appointment Rules.	Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012; Bihar Nagar Elementary Teachers (Employment and Service Conditions) Rules, 2012; Bihar District Board Secondary and Higher Secondary Teachers (Employment and Service Conditions) Rules, 2006; Bihar Municipal Body Secondary and Higher Secondary Teachers (Employment and Service Conditions) Rules 2006; as amended.
8	Status of appointment Rules	The said relevant Rules has already repealed.	It is in existence
9.	No. of teachers	Upto 2006 in Primary & Secondary about 1,30,000	After 2006 in Primary & Secondary about 4.4 lakhs
10.	Appellate Authority	RDDE/Director, Secondary Education	District Appellate Authority/State Appellate Authority.

21. During the pendency of these matters, a Resolution was passed by the State Government on 11.08.2015, under which the Niyojit Teachers were granted a pay-scale instead of fixed salary that was contemplated under 2006 Rules. The Resolution also indicated number of primary teachers, secondary teachers and higher secondary teachers as well as

librarians that were appointed and the pay-scale that was given to those teachers. The tabular chart given in the Resolution was as under:-

"2.1 Primary Teacher

Sl. No.	Post	No. of Vacancies	Pay-scale	Grade pay
1	2	3	4	5
1.	Primary Teacher (Untrained)	62031	5200-20200	5
2.	Primary Teacher (Trained)	245344	5200-20200	0
3.	Primary Teacher (Graduate untrained)	14000	5200-20200	0
4.	Primary Teacher (Graduate trained)	22739	5200-20200	2400
	Total Teachers (inclusive of number of teachers to be appointed in future as against the declared vacancies)	344114		

2.2 Secondary Teacher/Librarian

Sl. No.	Post	No. of Vacancies	Pay-scale	Grade pay
1	2	3	4	5
1.	Secondary Teacher (Untrained)	4463	5200-20200	0
2.	Secondary Teacher (Trained)	25038	5200-20200	2400

3.	Librarian	1900	5200-20200	0
4.	Higher Secondary Teacher (10+2) (untrained)	3058	5200-20200	0
5.	Higher Secondary Teacher (10+2) (trained)	26774	5200-20200	2800
	Total Teachers (inclusive of numbers of teachers to be appointed in future as against the declared vacancies)	61233		

Para 2.5 of the Resolution was as under:-

> "2.5 The benefit of Dearness Allowances; Medical Allowances; House Rent Allowances and Annual Increment, as announced for State Govt. Employee from time to time, will be extended to Niyojit Trained, Untrained |Primary, Secondary, Higher Secondary Teachers and Librarians."

The Resolution further prescribed the minimum basic pay-scale for trained primary, secondary and higher secondary teachers as well as the librarians from 1.7.2015. Additionally, the Resolution stated that amounts of Rs.2,000/- for trained teachers, Rs.2,400/- for secondary trained teachers and librarians and Rs.2,800/- for higher secondary trained teachers would be payable as Grade Pay. Similarly, in cases of untrained

teachers it was stipulated that with effect from 1.7.2015 there would be rise of at least 20% in their emoluments and they would also be entitled to Special Allowance. The Resolution further stated that the revised emoluments would entail financial impact as under:-

Particulars of additional financial impact					
Sl. No.	Grade	Number of Niyojit Teachers who would benefit	Total emoluments payable in terms of the pay-scale	Total emoluments being paid presently	Total additional financial impact (figure in crores)
1	Primary Teacher	344114	6693.23	4173.21	2520.04
2	Secondary Teachers, Higher Secondary Teachers and Librarians	61233	1259.30	830.85	428.45
	Total	405347	7952.55	5004.06	2948.49

22. When the matters were taken up for consideration by the Division Bench, it was submitted on behalf of the Writ Petitioners that both categories of teachers i.e. Government Teachers and Niyojit Teachers were imparting instructions in the same nationalized schools and yet there was considerable difference in the emoluments paid to Niyojit Teachers; that both the categories of teachers were discharging same responsibility and were teaching the same syllabus and there was no difference in the performance of their duties and responsibilities; that the distinction made

between these two categories was completely unreasonable and that on the basis of constitutional principle of "equal pay for equal work" Niyojit Teachers were entitled to same salary, pay-scales and emoluments as were payable to the Government Teachers in nationalised schools. Strong reliance was placed on the decision of this Court in *State of Punjab and others vs. Jagjit Singh and others*[2] and particularly on paras 42 and 44 thereof.

While defending the action on part of the State, the learned Advocate General submitted *inter alia* that the Writ Petitioners were appointed under the provisions of 2006 Rules and as such, they could not challenge the validity of the Rules under which they were appointed; that the teachers appointed before 2006 were appointed by the Director on the recommendations of Vidyalaya Seva Board/Bihar Public Service Commission/Subordinate Service Selection Board whereas Niyojit Teachers were appointed under completely different sets of Rules; that the teachers appointed prior to 2006 was a dying or a vanishing cadre and there were no fresh appointments in that category; thus the Niyojit Teachers could not claim any parity on the basis of "equal pay for equal work".

---

2 (2017) 1 SCC 148

At the conclusion of the hearing, written submissions were also filed on behalf of the State to the following effect:-

> "1. That in the instant matter argument proceedings are completed and order reserved on 09.10.2017, the instant written submission is being filed with a view to supplement the contentions raised in the earlier affidavits in respect of claim raised by the petitioners in this case.
>
> 2. That it is stated that at present 3,19,703 teachers in Elementary Education and 37,529 teachers in Secondary & Higher Secondary Education are working under Panchayati Raj institutions and Urban Local Bodies and the State Government provides grants-in-aid to the local bodies for the payment of salary to such teachers and at present the estimated budgetary expenditure is about Rs.8924.48 Crores per annum.
>
> 3. That if the teachers appointed by the local bodies are allowed salary at par with teachers of dying cadre of State Government, the estimated budget will come to Rs.18853.96 crores, for which additional budgetary allocation of Rs.9929.48 crores will be required.
>
> 4. That it is relevant to mention here that there are large number of vacancies of teachers from Elementary level to Higher Secondary level which are likely to be filled up in due course. As per available information, 1,71,775 vacant posts of teachers in Elementary Education and 38000 vacant posts in Secondary/Higher Secondary Education exist and this way, an additional amount of Rs.6144.02 crores would be required to meet salary for payment of future recruitments.
>
> 5. That in view of aforementioned discussions, it would be evident that an additional budgetary allocation of Rs.16073.50 crores would be required to meet the expenses likely to be incurred in payment of salary to the working teachers as well as teachers likely to be recruited in near future under local bodies in addition to the present estimated budgetary expenditure of Rs.8924.84 crores, which would be apparent from the chart annexed herewith. A photocopy of composite chart is annexed herewith an is marked as Annexure-R in this written submission.
>
> 6. That it is relevant to point out here that at present the total budgetary provision on education by the State

> Government is Rs.25251 crores which is about 16% of total budgetary provision of the State Government and if the prayer of the petitioner of these bunch of writ applications would be allowed, the fiscal condition of the State would get adversely affected and further, it would also affect all other duties and functions including welfare programme of the State Government.
>
> 7. That in view of the aforementioned facts, the deponent humbly submits that while deciding the issue in question, the aforesaid fact needs to be considered by this Hon'ble Court.

23. All the Writ Petitions were allowed by the High Court by its judgment and order dated 31.10.2017. During the course of said judgment, following issues were framed:-

> "(i) Whether Rules 6 and 8 of Rules 2006 are consistent with Article 14 of the Constitution of India or it is violative of Article 14 of the Constitution.
>
> (ii) Whether the Niyojit Teachers are entitled to equal pay for equal work at par with the teachers appointed in the nationalised school prior to coming into force 2006 Rules or not?
>
> (iii) Whether the writ petitioners are entitled to a direction for fixation of their pay at par with their counterparts teachers appointed in the nationalised school prior to framing of 2006 Rules or not?"

24. It was observed that there was no pleading that the Niyojit Teachers appointed after 2006 were, in any manner, inferior in qualification or training and that there was no material to suggest that they were discharging different duties and responsibilities in the same institution. It was found that the admitted position was that both

categories of teachers were discharging similar duties of imparting instructions in same schools and were having necessary qualifications as were possessed by the teachers appointed before 2006. The High Court placed reliance on the decisions of this Court in *Jagjit Singh*[2] and *Jaipal and others vs. State of Haryana and others*[3] and found that the action on part of the State in denying the pay-scales to Niyojit Teachers was arbitrary and unreasonable. It was concluded as under:-

> "58. Thus materials on the record are clinching on the point that the Niyojit Teachers are regular teachers working in the nationalised school under the control of the State Government. The State Government has adopted two different pay-scales one for the Niyojit Shikshak and the other for the teachers known as regular teachers appointed prior to framing of 2006 Rules. Such discrimination in the pay-scale on the basis of artificial distinction is unreasonable."

25. During the course of its discussion, it was also observed as under:-

> "46. I also find that the poor scale to the Niyojit Shikshak has adversely affected the academic atmosphere in the state of Bihar. The ill paid teachers without having any promotional prospects cannot be expected to deliver the best. The settled principle of personal management is that incentive and prospect boost the moral of man force in service. The better salary and prospect in the career is catalyst for the best performance, the teachers in such schools drawing less than the class 4 employee are not good to the institution and the society. It is a matter to introspect and the State Government must rise to the situation and undo the injustice by making payment at par with the other regular teaches to the Niyojit teachers. It appears that the poor payment to the teachers appointed

3 AIR 1988 SC 1504

under 2006 Rules has adversely affected the recruitment of the best and most competent teachers and probably that is one of reasons that there is mushrooming of coaching Institutes where the students are more attracted then regular teaching in the school. The Court cannot ignore the ground reality."

Finally, the High Court directed, *inter alia*,

"(ii) The petitioners are entitled to "equal pay for equal work"

(iii) The respondents are directed to fix their pay-scale like regular teachers of the nationalised school with effect from the initial date of appointment notionally and actual payment with effect from 8.12.2009, the date of filing of CWJC No.17176 of 2009, in view of the fact that such grant of relief from the date of filing of the writ application was approved by the Apex Court in the case of *State of Haryana vs. Charanjit Singh* [4] discussed in the judgment of *Jagjit Singh's*[2] case (supra) and I have held that Rule 8 is inoperative, in effective, inapplicable from the date of inception as it is arbitrary and unconstitutional and violative of Article 14 of the Constitution so far as the Niyojit Shikshak are concerned.

(iv) The respondents are also directed to revise the pay-scale of the petitioners according to the principles of pay revision under recommendation of the 7th Pay Revision to the Niyojit Shikshak like other regular employees after granting equal pay for equal work notionally from the date of their appointment and actual payment with effect from the date of filing of 1st of the batch of writ petitions, i.e. 8.12.2009.

(v) Such exercise must be completed within a period of three months from today and monetary benefits admissible to the Niyojit Shikshak must be paid to them within a further period of three months."

4 (2006) 9 SCC 321

26. State of Bihar, being aggrieved, has challenged the aforesaid decision of the High Court in these appeals. On 29.01.2018 this Court passed the following order:-

> "The question raised in this batch of petitions is whether there must be parity in the teachers recruited by the local bodies and teachers recruited by the State Government.
>
> According to the stand of the State Government, the teachers recruited by the State Government prior to 2006 are a dieing cadre. There are about 50,000 teachers in the category of teachers recruited by the State Government as against approximately 3,50,000 teachers in the category of the teachers recruited by the local bodies. It is submitted that there is thus, only one permanent category i.e. those recruited by local bodies. The salary paid to the second category is roughly Rs.20,000/- as against the salary of Rs.56,000/- on an average paid to the teachers recruited by the State Government as of now.
>
> … … …
>
> Even though, on principle, there has to be parity in the salary of the teachers, whether recruited by the State Government or by the local bodies. If any filters, consistent with the law, are required to be employed for giving the parity, the same can be done. However, question is of applicability of such principle where category of teachers in first category is declared a dieing cadre. Secondly, we need to consider whether it is practical to fasten the State Government with the liability for the arrears. The stand of the State is that in future there will be only one category i.e. teachers recruited by the local bodies. Even in such situation, there has to be rational in the pay package of the teachers recruited by the local bodies. In doing so, the amount paid by the Central Government ought to be utilised by the State Government and the State government may consider the view-point of the respondents and come out with a proposal which may be reasonable. It may constitute an Expert Committee of at least 3 officers in the rank of Chief Secretary. The said Committee will also be free to interact and consider the view-point of the concerned teachers as well as any other stakeholders, in case any suggestion is received by it. Such suggestion may be addressed/given to the Chief

> Secretary which in turn can be considered by the Expert Committee.
>
> We accordingly adjourn the matter to 15th March, 2018 for further consideration.
>
> We consider it necessary to request Mr. P.S. Narasimha, learned Additional Solicitor General, to assist the Court to place the view-point of the Central Government before the Court.
>
> Status quo, as on today, be maintained in the meantime."

27. Accordingly, an Expert Committee consisting of Chief Secretary-Bihar, Principal Secretary-General Administration Department and Principal Secretary-Water Resources Department was constituted. The Committee set out the background facts as under:-

> "… … …The Committee perused the Rules relating to niyojan of teachers under the Panchayati Raj Institutions as well as Municipal Bodies which was promulgated in the year 2006 and was amended from time to time. In view of provisions under rule-20 of the Bihar Panchayat Primary Teachers (appointment & Service conditions) Rules, 2006, the earlier contractual appointees on the post of Panchayat Shiksha Mitra were adjusted/absorbed as panchayat/block teachers w.e.f. 01.07.2006. Panchayat Shiksha Mitra were appointed on contractual basis for a period of 11 months on a fixed remuneration of Rs.1500/- per month from the year 2002-03 in the rural areas. The total number of such contractual appointees was 1,04,114 on 01.07.2006, who were adjusted/absorbed on the post of panchayat/block teacher and were paid a fixed pay of Rs.5000/- per month in case they were trained and Rs.4000/- per month in case they were untrained.
>
> In the said rules, 2006 it was also provided that after every three years there shall be an increment of Rs.500/- in case of trained and Rs.300/- in case of untrained on the basis of their evaluation as prescribed.

The Rules, 2006 was amended in the year 2009 wherein provision for Evaluation Test was made and it was provided that after qualifying in the said test, the increment in pay shall be granted. It was further provided that maximum three attempts would be given for qualifying in the said test failing which they shall be terminated by their respective employer. The said evaluation test was only for the purpose of increment in pay and not for grant of pay-scale, equivalency or certification, if any.

6. In view of provisions under Article-21A of the Constitution of India, the education to the children of age group 6-14 has been made a fundamental right and in the light of Right of Children to Free & Compulsory Education Act, 2009 which came into force w.e.f. 01.04.2010, the National Council for Teachers Education (NCTE) has been notified as the academic authority by the Central Govt. The NCTE has fixed the minimum eligibility criteria for appointment on the post of primary teachers and in that background, Bihar Panchayat Primary Teachers (appointment & Service conditions) Rules, 2012 has been framed wherein the minimum eligibility criteria for appointment has been fixed that a candidate should be qualified in Teachers Eligibility Test conducted by the Central or State Govt. Thus, the Teachers Eligibility Test is merely an eligibility to make an application for his/her selection. In other words, no person can be appointed on the post of a teacher unless he successfully passes through the requisite selection process.

7. Similarly, rules for selection on the post of teacher in Secondary & Higher Secondary Schools were also promulgated. Selection/appointment in the primary & secondary segment was made after 2006 by the Gram Panchayat & Municipal bodies and no provision for any examination/test was made in the said selection process.

8. For appointment on the post of primary teacher, prior to 2006 Rules, rules were also framed in 2003 wherein it was provided that recommendation shall be made for such appointment after conducting preliminary & mains examination by the Staff Selection Commission, Bihar.

9. Similarly, for appointment on the post of Secondary Teacher, prior to 2006 Rules, rules were also framed in 2004 wherein it was also provided that recommendation shall be made for such appointment after conducting

> preliminary & mains examination by the Staff Selection Commission, Bihar."

It, thereafter, considered the current situation after the Resolution dated 11.8.2015 and implementation of the recommendations of 7th Pay Commission. The Committee went on to observe:-

> "18. It may be noted that in the elementary schools there are about 3,19,703 niyojit teachers whereas; in the secondary/higher secondary schools there are about 38,715 niyojit teachers (including librarians). Out of those teachers working in the elementary schools, 2,65,000 teachers are covered under the Sarv Shiksha Abhiyan. For payment of salary to the teachers covered under the Sarv Shiksha Abhiyan, the percentage of share of Central Government and State Government is 60% and 40% respectively.
>
> … … …
>
> 22. … … 1. It is financially impractical to act upon suggestions received for implementation of order of the Hon'ble High Court dated 31.10.2017 relating to grant of pay scale to the niyojit teachers notionally from the date of their initial joining and actual benefits from 08.12.2009 at par with that of Assistant Teachers appointed by the State Government, for the reasons that if the said order is implemented, the State Government would be liable to pay an amount of about Rs.52000/- crores in terms of arrears to such teachers, which would not be possible from the financial resources of the State Government."

The Committee, then, suggested:-

> "Taking into account the financial resources of the State Government and procedure adopted for niyojan of such teachers, upgraded pay structure can be granted to such niyojit teachers (including teachers who have qualified in the Teachers Eligibility Test) after going through a filtration process. The basis of filtration process should be a special examination conducted for the said purpose.

> Two separate chances shall be given for appearing in the special examination."

It was further suggested that upgraded pay structure could be granted to such Niyojit Teachers who succeeded in special examination conducted for said purpose and thus, teachers who pass such special examination be covered under the upgraded pay structure with an increment of 20% in their pay.

28. An affidavit in reply was, thereafter, filed on behalf of the Ministry of Human Resource Development, Union of India. It was stated that Sarva Shiksha Abhiyhan (SSA) and Rastriya Madhyamik Shiksha Abhiyan (RMSA) were operational from the financial years 2000-2001 and 2009-2010 respectively till 2017-2018 and that both the programmes were Centrally Sponsored Schemes under which funding was shared between Central and State Governments. These programmes were conceived to achieve Universal Elementary Education. It was then stated:-

> "23. To summarise, it is submitted that the Sarva Shiksha Abhiyan (SSA), the erstwhile Centrally Sponsored Scheme was being implemented since 2001-02 in partnership with the State Governments and Union Territory Administrations for universalising elementary education across the country. Its overall goals included universal access and retention, bridging of gender and social category gaps in education and enhancement of learning levels of children. Subsequent to the enactment

of the RTE Act, 2009 by Parliament, the SSA norms were revised to harmonise with RTE provisions. Funds under SSA are provided for more than 40 interventions such as opening of new schools, residential school facilities, additional class rooms, provisioning for teachers, periodic teacher training etc. The SSA Framework also provides support for additional teachers to maintain Pupil Teacher Ratio (PTR) in schools and teachers for new elementary schools opened under SSA programme. Part of the funds required for such positions approved and filled-up under the SSA programme were met by the Central and State Governments. Since *the recruitment and other service matters of these teachers are under the domain of State Govts. and UTs, the salary and pay fixation for these teachers was done by the respective States and UTs.*

24. That the Chapter-III point 21 of the Financial Management and Procurement (FMP) Manual under the heading "Appointment of teachers" provided that SSA would be an addition to States and UTs and the States and UTs would have their own norms for recruitment of teachers and payments of salary to new recruits. The States will be free to follow their own norms as long as these are consistent with the norms prescribed by NCTE and Assistance will not be available for filling up existing vacancies that have arisen on account of attrition. A true typed copy of the FMP Manual of SSA is attached and marked herewith as ANNEXURE-8.

New Scheme – Samagra Shiksha

25. The Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamiik Shiksha Abhiyan (RMSA) and Centrally Sponsored Scheme on Teacher Education (CSSTE) were the three major flagship school education development programmes of the Ministry of Human Resource Development (MHRD), Government of India being implemented in partnership with State/UTs since 2000-01, 2009-10 and 1987 respectively. While the SSA covered the elementary level (grades I-VIII), the RMSA covered grades IX-X, whereas CSSTE aims to provide infrastructural and institutional support to Government Teacher Education Institutions (TEIs) to enhance the quality of teachers. The approval of these schemes was upto the end of 12th five year plan in 2016-17. These were extended for a period of one year i.e. 2017-18, pending their Evaluation and further approval. Although, the

Central Sponsored Schemes of SSA, RMSA and TE have significantly contributed towards the government's efforts to provide access to education in the country, their scope and coverage remained segmented and did not provide for any intervention for the pre-school level and only very limited support for senior secondary levels. Also, there was a need to focus on the improvement of quality of education and learning out comes of students. Further, independent evaluations of the Schemes instituted at the end of the 12th five year plan, had also suggested increased convergence and integration between the Schemes through a single school education development programme covering grades I-X/XII. Therefore, it has been decided to formulate a single scheme for School Education by merging the different school education development schemes and programmes like the SSA, RMSA and CSSTE into an overarching programme with the broader goal of improving school effectiveness measured in terms of equal opportunities for schooling and equitable learning outcomes. The draft guidelines for the new scheme were circulated among the States and UTs for their comments vide letter No.2-16/2017-EE.3 dated 22nd January, 2018 and also discussed in the National Workshop of all States and UTs held on 30th January 2018. The new scheme – 'Samagra Shiksha' – has been approved by the Cabinet on 28th March, 2018 and it came into the effect from 1st April, 2018.

26. The vision of the scheme is to ensure inclusive and equitable quality education from pre-school to senior secondary stage in accordance with the sustainable Development Goal (SDG) for Education. The major objectives of the scheme are provision of quality education and enhancing learning outcomes of students; Bridging Social and Gender Gaps in School Education; Ensuring equity and inclusion at all levels of school education; Ensuring minimum standards in schooling provisions; Promoting Vocationalisation of Education; Support States in implementation of Right of Children to Free and Compulsory Education (RTE) Act, 2009; and Strengthening and Upgradation of State Councils of Educational Research and Training (SCERTs/State Institutes of Education (SIEs) and District Institutes of Education and Training (DIETs) as nodal agencies for teacher training.

27. The Samagra Shiksha envisages the 'school' as a continuum from pre-school, primary, upper primary, secondary to senior secondary levels. This will smoothen the transition across the various levels of school education and aid in promoting universal access to children to complete school education. The major interventions across all levels of school education, under the scheme are: (i) Universal access including infrastructure development and retention; (ii) Gender and Equity; (iii) Inclusive Education; (iv) Enhancement of Quality; (v) Financial Support for Teachers Salary; (vi) Digital Initiatives; (vii) RTE entitlements including uniforms, text books, etc; (viii) Pre-school Education; (ix) Vocational Education; (x) Sports and Physical Education; (xi) Strengthening of Teacher Education and Training; (xii) Monitoring; and (xiii) Programme Management.

28. The Budget for all the three schemes is being merged into a single Budget provision. This will be the Central share to be provided to the States and UTs with the existing fund sharing pattern of 60:40 for all the States, with the exception that the pattern will be 90:10 for North-Eastern and three Himalayan States and 100% for Union Territories without Legislature.

29. In order to focus on improvement of educational indicators and quality of education, part of the funds will be allocated amongst the States and UTs based on an index of requirements/performance. The use of funds would be governed by approved interventions within the ceilings decided by the empowered committee of the department i.e., the Project Approval Board headed by Secretary, Department of School Education & Literacy. A single Utilisation Certificate would be required from the State streamlining the merged Schemes. Further, it was noticed that in the erstwhile schemes of SSA and RMSA, the support for teacher salary was as per the State notified salary structures which showed a wide variation. Therefore, to maintain uniformity in central support for teacher salary for all States/Uts and provide funds for quality enhancement, the ceiling limits for support for teacher salaries have been laid down under the integrated scheme. Thus, while the teachers will continue to be governed by the Terms and Conditions of the respective States/Uts, the support under the Integrated Scheme would be the same across all States and Uts in the Country. The focus of the scheme is to support States in taking

> initiatives to improve the learning outcomes, strengthen teacher training institutions, enhanced capacity building of teachers and use of digital technology for effective outcomes. The norms for salary of teachers has been attached and marked herewith as ANNEXURE-9."

29. The affidavit then gave details of the funds allocated to the States/UTs under the SSA from the year 2014-15 to 2017-18 in a tabular chart as under:-

Status of Four year Central Releases under SSA					
S. No.		**2014-15**	**2015-16**	**2016-17**	**2017-18**
	BE	**28258 crore**	**22000 crore**	**22500 crore**	**23500 crore**
	RE	**24380 Crore**	**22015.10 crore**	**22500 crore**	**23593.86 crore**
					(Rs. In lakh)
	State	**Central Releases**	**Central Releases**	**Central Releases**	**Central Releases**
1	Andaman & Nicobar	147.21	359.46	479.14	1945.53
2	Andhra Pradesh	154566.67	66810.81	63302.18	70431.00
3	Arunachal Pradesh	33607.82	18179.44	19956.64	23022.07
4	Assam	97782.19	100464.64	87652.30	123584.00
5	Bihar	216336.05	251557.32	270688.45	255797.00
6	Chandigarh	3893.53	3521.81	3333.56	9265.50
7	Chhattisgarh	92705.30	62219.70	59262.77	67412.85
8	Dadar & Nagar Haveli	911.74	594.91	1068.37	5476.54
9	Daman & Diu	72.77	78.38	300.00	1038.57
10	Delhi	6223.74	7293.80	8306.20	10976.90
11	Goa	1310.39	813.58	869.11	862.60
12	Gujarat	78476.49	61563.84	77740.52	65046.00
13	Haryana	42110.65	34501.21	32000.88	36355.00
14	HP	12547.30	12139.13	12825.46	30874.00
15	J & K	51276.52	129980.54	107250.05	153797.98
16	Jharkhand	75775.18	55863.31	50945.73	58984.54
17	Karnataka	66213.52	41759.34	54495.51	54882.00

18	Kerala	21844.02	12858.86	11316.74	13680.00
19	Lakshadweep	58.83	139.55	239.87	406.52
20	Madhya Pradesh	149094.92	160197.86	154455.08	173814.00
21	Maharashtra	58288.54	41225.28	60369.65	64232.00
22	Manipur	21465.81	18355.46	4405.31	18377.00
23	Meghalaya	20404.52	16627.04	20067.01	33579.51
24	Mizoram	14739.70	9437.51	10934.31	12000.34
25	Nagaland	20568.74	8739.53	10725.35	11717.00
26	Puducherry	100.00	583.14	304.68	622.73
27	Punjab	36215.98	30003.22	30002.69	31665.00
28	Rajasthan	248041.55	193462.08	182578.48	198973.00
29	Sikkim	4526.78	4054.36	3479.24	5684.35
30	Telangana	81406.78	21776.01	41776.09	44244.72
31	Tamil Nadu	135819.79	82111.73	82111.30	86644.00
32	Tripura	19800.14	16956.75	19190.95	20220.38
33	UP	449867.53	505434.32	505433.98	424980.68
34	Uttarakhand	22880.57	22588.40	25268.98	62499.00
35	West Bengal	97240.30	84679.41	82185.33	89657.00
Central Releases Total		2403016.41	2159013.36	2165744.89	2349361.32

30. The affidavit then considered the financial implications if the directions issued by the High Court in the present case were to be implemented in all States/UTs. It was stated:-

> "31. That consequent to the interim order of this Hon'ble Court dated 27th March, 2018 in the present Petition, the Department of School Education & Literacy, Ministry of Human Resource Development, Government of India has attempted to estimate the financial implication of the impugned judgment across the States. The department has collected information from all 36 States and UTs regarding number of teachers sanctioned under the erstwhile schemes of Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and number of teachers available under the State cadres at elementary and secondary level. The information was collected disaggregated for Permanent Teachers, Contractual Teachers and Teachers appointed by Local Bodies under SSA, RMSA and State Cadre. Information on average monthly salary for each category of teachers was also collected.

32. That the Financial implication of the impugned judgment has been estimated based on the number of teachers reported by States for the year 2017-18 under the above mentioned three categories and their average monthly salary. In case the Local Body appointed teachers/Contractual Teachers are given salary at par with the regular teachers of State cadre, it is estimated that financial implication will be a minimum of Rs.Thirty Six Thousand Nine Hundred Ninety Eight Crores (Rs.36998 crores) per year. This estimation does not include perks and other benefits which are applicable as per the extant rules of the respective States/UTs, which will further add to the cost. A true typed copy of the Estimation sheet is annexed and marked herewith as ANNEXURE-11"

Annexure 11 to the affidavit was as under:-

S. No.	**State**	**Tentative requirement of additional Salary funding**
1	Andaman & Nicobar	4.87
2	Andhra Pradesh	57.82
3	Arunachal Pradesh	183.16
4	Assam	316.94
5	Bihar	10460.70
6	Chandigarh	17.83
7	Chhattisgarh	5867.79
8	D & N Haveli	19.76
9	Daman & Diu	4.75
10	Delhi	56.66
11	Goa	7.82
12	Gujarat	.78
13	Haryana	267.77
14	HP	463.56
15	Jammu & Kashmir	117.83
16	Jharkhand	3861.98
17	Karnataka	0
18	Kerala	31.54
19	Lakshadweep	2.34
20	Madhya Pradesh	2971.13
21	Maharashtra	157.49
22	Manipur	NA
23	Meghalaya	288.09
24	Mizoram	102.64
25	Nagaland	90.03
26	Odisha	429.19

27	Puducherry	.98
28	Punjab	147.04
29	Rajasthan	0
30	Sikkim	131.68
31	Tamil Nadu	0
32	Telangana	0
33	Tripura	103.31
34	Uttar Pradesh	8448.78
35	Uttarakhand	67.74
36	West Bengal	2316
	Total Fund required	36998.00

31. When the matters were taken up for hearing, the submissions for the State Government were made by Shri Dinesh Dwivedi, Shri Rakesh Dwivedi and Shri Shyam Divan, learned Senior Advocates.

A) Shri Dinesh Dwivedi, learned Senior Advocate submitted that the teachers appointed before 2006 and the Niyojit Teachers appointed in terms of 2006 Rules stood on a different footing and the distinction made by the State Government on that basis was quite natural and rational. It was the decision of the State Government not to make any further appointments in the category of State Government Teachers and as such, those appointed before 2006 were part of a dying or vanishing cadre. The reliance on

pay-scales of such dying or vanishing cadre and to apply them to more than four lakh teachers appointed in terms of 2006 Rules would not only be an incorrect and imperfect idea but would also entail tremendous economic burden on the State. In such matters, the economic capacity has always been considered by this Court to be a relevant circumstance. In his submission, the distinction between those appointed prior to 2006 forming a dying cadre and those appointed in terms of 2006 Rules, who were appointed at local or block levels, was a valid classification. He relied upon judgments of this Court in *i) Tarsem Lal Gautam and anotherr. vs. State Bank of Patiala and others*[5], *ii) V. Markendeya and others vs. State of Andhra Pradesh and others.*[6], *iii) Dharwad Distt. P.W.D. Literate Daily Wage Employees Association and others vs. State of Karnataka and others*[7], *iv) Secretary, Finance Department and others vs. West Bengal Registration Service Association and others*[8], *v) State of U.P. and others vs. Ministerial Karamchari Sangh*[9], *vi) State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association*[10] *and vii) S.C. Chandra and others vs. State of Jharkhand and others*[11].

---

5 (1989) 1 SCC 182
6 (1989) 3 SCC 191
7 (1990) 2 SCC 396
8 1993 Supp (1) SCC 153
9 (1998) 1 SCC 422
10 (2002) 6 SCC 72
11 (2007) 8 SCC 279

B) Shri Rakesh Dwivedi, learned Senior Advocate submitted that with the insertion of Article 21A in the Constitution and Right to Free and Compulsory Education of Children being a Fundamental Right, the State was required to spread educational opportunities and establish schools in remotest areas. The State had never been averse to granting pay-scales which could be more remunerative but initially the emphasis had to be on spread of education within the constraints of its resources. He submitted that as a part of the Constitutional obligation of providing free and compulsory education, the State has set up 21261 new primary schools, upgraded 19617 primary schools to middle school level and also upgraded 3129 middle schools to secondary or senior secondary level and that the State has presently been spending 20% of its budget on education. Since the first and foremost objective was to achieve spread of education, with the passage of time, the State has consciously been improving the emoluments which were initially granted to Niyojit Teachers. He further submitted that in terms of provisions of the Act it is the responsibility of the State to spread education in every neighbourhood and in every nook and corner of the State. He submitted that the policy of roll out of universalisation and spread of education was carefully crafted keeping in mind the capacity of the State. First task having been achieved, the State is

now gearing up for improving the quality of education and in that pursuit the State would certainly make the service conditions more remunerative to attract better talent and render its constitutional obligation with greater emphasis, but to compare the present scales with that of a dying or vanishing cadre was completely unjustified. He relied upon decisions of this Court in i) *Official Liquidator vs. Dayanand and others*[12], ii) *State of Punjab and another vs. Surjit Singh and others*[13], iii) *Steel Authority of India Limited and others vs. Dibyendu Bhattacharya*[14], *iv) Gopal Chawala and others vs. State of Madhya Pradesh and others*[15] and *v) M.M.L. Aurora and others vs. Union of India and others*[16].

Shri Rakesh Dwivedi, learned Senior Advocate also gave a Note, the relevant part of which was as under:-

> "After change of government in Bihar in November 2005, it was found that 12% (23,15,362) children between the ages of 6-14 years were out of school. Due to the pro-active stance of the State of Bihar and implementation of the Right to Education Act and the mandate of 73rd and 74th Amendments read with 11th and 12th Schedule, thisstands reduced to less than 1% (2,01,806) children today.
>
> In order to rectify this and extend the reach of education (both rural and urban) within its meagre resources, State of Bihar took a policy decision and resolved to recruit new teachers through its Panchayati Raj Institutions. New Rules were enacted and all recruitments to the post of teachers at all levels of school

12 (2008) 10 SCC 1
13 (2009) 9 SCC 514
14 (2011) 11 SCC 122
15 (2014) 13 SCC 792
16 1995 Supp (1) SCC 279

education were made through this mode only. Old method of recruitment was abolished and the cadre of existing Assistant Teachers became a Dying Cadre, as per chart below:

School	Regular Teachers in 2006	Regular Teachers (at present)
Elementary	1,04,259	**57293** By its order dated 13.10.2011 in a Contempt Petition, Bihar was compelled to appoint 34,540 Assistant Teachers on the basis of a merit list prepared by this Hon'ble Court (reported as 2014 (11) SCC 405. 32,327 were appointed and dispute was raised in respect of 2213. 6170 out of them have retired and 26157 still remain in service. **(31136+26157 = 57293)**
Secondary	18458	7800

After Right to Education Act, 2009, Union Govt. declared Sarva Shiksha Abhiyan as the main instrument to implement the provisions of the Right of Children to Free & Compulsory Education Act, 2009 and consequently, the same was renamed as SSA-RTE. Niyojit Teachers (respondents) are governed by new Rules framed under the 73rd and 74th Constitution Amendment. RTE provides for sharing of resources between Centre and States for implementation of the Act.

Population of the State of Bihar is 10.41 crores. After 2005, it has opened 21261 new Primary Schools and Upgraded 19617 Primary Schools to Middle School under Sarva Shiksha Abhiyan. 3129 Middle Schools were upgraded to Secondary or Senior Secondary School, which on date is as follows:

Primary Schools	42614
Middle Schools	29149
Secondary/Senior Secondary	5615

Impugned judgment has treated the matter as a simple service dispute. It has failed to appreciate the larger objective sought to be achieved, financial capacity of the State, financial impact on the Union of India and the State of Bihar, balancing competing interests of the regular and niyojit teachers, its financial

> ramification for other States in the implementation of Right to Education Act and Sarva Shiksha Abhiyan, its implication for all the other employees either working on contract or under different Schemes of the Center or the State and such like social objectives."

C) Shri Shyam Divan, learned Senior Advocate submitted that the concept of "equal pay for equal work" was alien to this case and the case involved complex policy issues. He submitted that the matter must be considered from the standpoint of the approach adopted by the State Government and all the constitutional options that were open to the State. On one hand it was the goal set out under Article 21A which was sought to be effectuated by the spread the education and on the other hand, the idea was devolution of powers to Panchayats in terms of Parts IX and IXA of the Constitution. The peculiar situation in Bihar was that at least 12% of the children were not being educated at all. This was essentially because of inadequate number of schools and inadequate number of teachers. This was sought to be remedied by appointment of one lakh Shiksha Mitras initially to cater to *rural* areas. The challenge to bring those 12% children who were outside the schools into the stream of education itself required tremendous efforts and consequent constraints on budgetary allocations. It is in this background that the attempts on the part of the State must be seen. The State not only absorbed those Shiksha Mitras but also recruited more

than 3.50 lakh Niyojit Teachers. It was his submission that the attempts and advances so made by the State could neither be called exploitative nor was dignity of any individual teacher compromised in any manner. The developments since 2006 are indicative that the State has substantially been improving the pay-scales and emoluments available to the Niyojit Teachers. He further submitted that the changes in Education System brought about in the State of Bihar post 2006 and the substantial spread in education had also improved enrolment of girl students and helped achieve reduction in Total Fertility Rate. He submitted a Note as under:-

> **"1. Improvement in Girls Enrolment & Education**
>
> The enrolments of girls increased significantly from 57.75 Lac (43.47% of total enrolment) in 2005-06 to 101.37 Lac (50.69% of total enrolment) in 2016-17 in elementary classes (1-VIII) of Government schools. Similarly, enrolments of girls considerably increase from 4.24 Lac in 2006-07 to 14.41 Lac in 2016-17 in secondary classes (IX-X) of government schools. The details are as under:-

Elementary Classes (I to VIII)			
Year	**Total Enrolment**	**Girls Enrolment**	**% Increase**
2005-06	13282932	5775325	43.47%
2016-17	19995608	10137266	50.69%
Secondary Classes (IX-X)			
2006-07	1158904	424790	36.65%
2016-17	2865460	1441176	50.29%

> The result of 10th and 12th Board also support the arguments and the status of passed out girls from 2006 to 2017 of 10th and 12th Board is as follows:-

Year	10th board			12th board		
	Total Appeared Student	Girls Appeared	% App.	Total Appeared Student	Girls App.	% App.
2005	560376	186613	33.30%	314802	99238	31.52%
2006	599104	207705	34.67%	339604	110579	32.56%
2007	688508	255463	37.10%	460609	170117	36.93%
2008	769244	294514	38.29%	508332	194456	38.25%
2009	901965	362506	40.19%	583209	234116	40.14%
2010	974393	403226	41.38%	607718	246830	40.62%
2011	931332	399328	42.88%	702069	283384	40.36%
2012	1262026	565228	44.79%	812315	328391	40.43%
2013	1364023	604247	44.30%	820590	323514	39.42%
2014	1338268	610388	45.61%	996954	414533	41.58%
2015	1424423	653307	45.86%	1219315	480491	39.41%
2016	1577840	725169	45.96%	1152826	484110	41.99%
2017	1763471	866283	49.12%	1257342	556084	44.23%

2. **Reduction in Total Fertility Rate (TFR)**

As per Sample Registration System (Registrar General of India), the Total Fertility Rate (TFR) of Bihar has been reduced significantly from 4.3 in 2005 to 3.3 in 2016. This is directly related to educational standard of girls, who are potential mother. This can be seen from the report of sample Registration System (SRS) for the year 2016 for the State of Bihar (copy enclosed as Annexure A) and report of NITI Aayog (copy enclosed as Annexure-B) which is as follows:

Education Level	Total Fertility Rate (TFR)
Illiterate	4.2
Without formal education	3.9
Below Primary	3.9
Primary	3.3
Middle	3.0
Class-X	2.7
Class-XII	2.2
Graduate & above	2.1
State Average	3.3
National Average	2.3

Source: - Sample Registration System (SRS) published

Annually (Registrar General of India)

3. Breakup of Out of School Children (6-14 years)

Out of School Children (6-14 years)			
Year	**Total**	**Girls**	**SC**
2005-06	2315362	1128110	588491
2017-18	201806	94974	55297

Following chart was also placed on record indicating Literacy Rate in State of Bihar in last seven decades:-

Year	Total		Male		Female	
	India	Bihar	India	Bihar	India	Bihar
1951	18.33	13.49	27.16	22.68	8.66	4.22
1961	28.30	21.95	40.40	35.85	15.35	8.11
1971	34.45	23.17	46.96	35.86	21.97	9.86
1981	43.57	32.32	56.38	47.11	29.76	16.61
1991	52.21	37.49	64.13	51.37	39.29	21.99
2001	64.83	47.53	75.26	60.32	53.70	33.57
2011	73.04	61.80	80.14	71.20	64.60	51.50

It is evident from above table that the decadal growth in female literacy in Bihar between 2001 and 2011 was 18%, which was highest in India. For this State Literacy Mission Authority (Govt. of India) gave award to the Principal Secretary, Department of Education, Govt. of Bihar in 2012."

Shri Divan relied upon decisions of this Court in *Bidi Supply Company vs. The Union of India and others*[17], *The State of Gujarat and another vs. Shri Ambica Mills Limited, Ahmedabad and another*[18], *The Superintendent and Remembrancer of Legal Affairs, West Bengal vs.*

17 1956 SCR 267
18 (1974) 4 SCC 656

Girish Kumar Navalakha and others[19], *H.H. Shri Swamiji of Shri Amar Mutt and others vs. Commissioner, Hindu Religious and Charitable Endowments Department and others*[20], *Col. A.S. Iyer and others vs. V. Balasubramanyam and others*[21], *Javed Niaz Beg and another vs. Union of India and another*[22], *Malpe Vishwanath Acharya and others vs. State of Maharashtra and another*[23], *Javed and others vs. State of Haryana and others*[24], *State of Maharashtra and others vs. Jalgaon Municipal Council and others*[25], *Sooraram Pratap Reddy and others vs. District Collector, Ranga Reddy District and others*[26] and *Shivashakti Sugars Limited vs. Shree Renuka Sugar Limited and others*[27].

32. Responding to the observations of the High Court in the Judgment under appeal and queries raised by this Court during the course of hearing whether the emoluments received by Niyojit Teachers were lesser than the salaries of non-teaching staff in schools, following details were furnished by the State in a tabular chart.

"(1) What are the salaries of non-teaching staff in schools?

---

19 (1975) 4 SCC 754
20 (1979) 4 SCC 642
21 (1980) 1 SCC 634
22 1980 Supp SCC 155
23 (1998) 2 SCC 1
24 (2003) 8 SCC 369
25 (2003) 9 SCC 731
26 (2008) 9 SCC 552
27 (2017) 7 SCC 729

There are posts of clerk and peon only under non-teaching staff category in secondary/senior secondary schools. There are no posts of non-teaching staff in Primary Schools (Class I-V) and Middle Schools (Class I-VIII).

Comparison of salary of Peon, Clerk and Niyojit Teachers

A. **On initial appointment**

(Amount in Rs.)

Description	Peon (Working under State Govt.	Clerk (Working under State Govt.)	Primary Niyojit Teachers (Trained)	Primary Niyojit Teachers (Graduate Trained)	Secondary Niyojit Teachers (Trained)	Senior Secondary (10+2) Niyojit Teachers (Trained)
Basic	18000	19900	13370	13370	13370	13370
D.A. @ 7%	1260	1393	936	936	936	936
HRA @ 4%	720	796	535	535	535	535
Medical	1000	1000	1000	1000	1000	1000
Gross salary	20980	23089	15841	15841	15841	15841

Note: No Grade Pay for Teacher for first two years of their Services.

B. **After completion of two years of service**

Description	Peon (Working under State Govt.	Clerk (Working under State Govt.)	Primary Niyojit Teachers (Trained)	Primary Niyojit Teachers (Graduate - Trained)	Secondary Niyojit Teachers (Trained)	Senior Secondary (10+2) Niyojit Teachers (Trained)
Basic	19100	21100	19650	20740	20740	21820
D.A. @ 7%	1337	1477	1376	1452	1452	1527
HRA @ 4%	764	844	786	830	830	873
Medical	1000	1000	1000	1000	1000	1000
Gross salary	22201	24421	22812	24022	24022	25220

C. **After completion of two years of service with 20% proposed enhancement of salary as per recommendation of three persons committee constituted by the Hon'ble Supreme Court.**

Description	Peon (Working under State Govt.	Clerk (Working under State Govt.)	Primary Niyojit Teachers (Trained)	Primary Niyojit Teachers (Graduate Trained)	Secondary Niyojit Teachers (Trained)	Senior Secondary (10+2) Niyojit Teachers (Trained)
Basic	19100	21100	23610	24930	24930	26240
D.A. @ 7%	1337	1477	1653	1745	1745	1837
HRA @ 4%	764	844	944	997	997	1050
Medical	1000	1000	1000	1000	1000	1000
Gross salary	22201	24421	27207	28672	28672	30127

33. The State also placed on record, increases in emoluments granted to Niyojit Teachers at various stages, as under:-

Increases in Salary of Elementary Niyojit Teachers (Trained) – At a Glance

Description	**Initial fixed Salary per Month (in rs.)**	**Present Gross Salary per Month* (In Rs.)**	**Increase in Amount of Salary (In Rs.)**	**% Increase**	**Remarks**
Recruited in 2003 Shiksha Mitra (Trained)	1500	25564	24064	1604	Pay Scale w.e.f. 01.07.2015 & increment of 2.57 times in the basic pay w.e.f. 01.04.2017 as per recommendat
Recruited in 2006 – Panchayat/ Prakhand/ Nagar Shikshak	5000	24843	19843	397	

(Trained)					ion of 7th Pay Commission
Recruited in 2010 – Panchayat /Prakhand/ Nagar Shikshak (Trained)	7000	24134	17134	245	
Recruited in 2013 – Panchayat/ Prakhand/ Nagar Shikshak (Trained)	10000	22812	12812	128	

***Note** – Gross Salary includes Dearness Allowances (DA), House Rent Allowances (HRA) & Medical Allowances.

After proposed enhancement of salary by 20%, as per recommendation of three persons committee constituted by Hon'ble Supreme Court.

Description	**Present Basic**	**Revised Basic ****	**DA (7%)**	**HRA**	**Medical**	**Proposed Gross Salary**
Recruited in 2003 – Shiksha Mitra (Trained)	22130	26590	1861	1064	1000	30515.00
Recruited in 2006 – Panchayat/prakhand/ Nagar Shikshak (Trained)	21480	25810	1807	1032	1000	29649
Recruited in 2010 – panchayat/Prakhand/ Nagar Shikshak (Trained)	20850	25050	1754	1002	1000	28806
Recruited in 2013 – panchayat/Prakhand/ Nagar Shikshak (Trained)	19650	23610	1653	944	1000	27207

****Note –** As per recommendation of three persons committee constituted by Hon'ble Supreme Court, those Niyojit teachers, who pass the special examination, would be covered under the upgraded pay structure, as per the category mentioned as against

> their designation in the proposed pay-matrix, with an increment of 20% in their pay of the pre-upgraded scale, which are being paid w.e.f. 01.01.2016."

34. Shri K.K. Venugopal, learned Attorney General for India, advanced submissions on behalf of Union of India. It was submitted that though the teachers appointed prior to 2006 and Niyojit Teachers were working in the same schools and carrying on similar functions, they formed separate cadres and came from different streams. The learned Attorney General relied upon decisions of this Court in *State of Punjab vs. Joginder Singh*[28] and in *Zabar Singh and others vs. the State of Haryana and others*[29] and more particularly paragraphs 25, 27, 28, 29, 30, 32, 33, 35, 36, 37 and 42 of said decision. According to the learned Attorney General, if there are two different or dissimilar groups there can be disparity. He submitted that for employees of the State Government it was a matter of status while Niyojit Teachers were recruited through completely different source. In his submission for doctrine of "equal pay for equal work" to be invoked there has to be wholesale identicality and if there be any distinction in matters including mode of recruitment, the doctrine could not be made applicable. He also relied upon decisions of this Court in *Kishori Mohanlal Bakshi vs.*

---

28 1963 Suppl. 2 SCR 169
29 (1972) 2 SCC 275

Union of India & Ors.[30] and *Randhir Singh vs. Union of India and others*[31], *State of Haryana and others vs. Jasmer Singh and others*[32], *State of U.P. and others vs. Ministerial Karamchari Sangh*[9], *Orissa University of Agriculture and Technology and another vs. Manoj K Mohanty*[33], *Government of W. B. vs. Tarun K. Roy and others*[34], *State of Haryana and others vs. Charanjit Singh and Others*[4] and *S.C. Chandra and others vs. State of Jharkhand and others*[11]. It was submitted by him that the spread of education as was sought to be achieved in terms of the mandate of the RTE Act required the resources of the State to be utilised to the maximum and in such executive functions and policy matters the Court ought not to interfere. He relied upon decision of this Court in *Indian Drugs & Pharmaceuticals Limited Vs. Workmen, Indian Drugs & Pharmaceuticals Limited*[35] and also invited attention to paragraphs 23 onwards from the affidavit of the Union of India as well as the estimation of additional financial burden as quoted hereinabove. It was submitted that the direction passed by the High Court would result in complete budgetary mismatch and tremendous burden on the State.

---

30 AIR 1962 SC 1139
31 (1982) 1 SCC 618
32 (1996) 11 SCC 77
33 (2003) 5 SCC 188
34 (2004) 1 SCC 347
35 (2007) 1 SCC 408

35. In response to certain questions raised by the Court during the course of hearing, the learned Attorney General submitted that education being a concurrent list topic, the recruitment and other service conditions of teachers including the matters concerning salary and pay fixation were within the domain of the concerned State Government; that the provisions of the Act did not prescribe the percentage share of grant-in-aid by Central Government and that there was no obligation on part of the Central Government to provide 60% of the State's education budget or estimates; that no funds were sought by the State of Bihar to address the issues of disparity in salary of teachers and that State of Bihar was getting second highest funds under *'Sarva Shiksha Abhiyan'*. With respect to applicability of Rule 20(3) of 2010 Rules, the learned Attorney General submitted that said Rule was applicable only to Union Territories without Legislatures, Kendriya Vidyalayas, Navodaya Vidyalayas and the States and Union Territories with Legislatures were expected to have their own Rules and State of Bihar had published its own set of Rules in 2011.

36. The submissions on behalf of Niyojit Teachers and their organizations who appeared as respondents and intervenors were led by Mr. Kapil Sibal, learned Senior Advocate on behalf of Bihar Rajya Prarambhik Shikshak Sangh**.** The submissions of the other learned counsel

who followed him are dealt with in the order that they appeared and argued. It was submitted by Mr. Sibal:-

(i) Niyojit Teachers were working in same schools, the management and control of which, was taken over by the State. The Niyojit Teachers were imparting education in same schools and discharging same functions as were being discharged by the Government Teachers.

(ii) RTE Act contemplated schools owned by the appropriate Government and those which are owned by the local authorities. In the present case all the schools in question were owned by the State.

(iii) Under Section 6 of the RTE Act the appropriate Government was obliged to carry out the provisions of the Act within a period of three years.

(iv) Section 7 of the RTE Act put the responsibility on the Central Government as well as the State Government concurrently for carrying out the provisions of the Act.

(v) The Union Government had actually collected Education Cess and as such the budgetary constraints could never be an argument to defeat the rights of Niyojit Teachers.

(vi) As a matter of law, financial difficulty would be no ground to oppose the rightful demands of Niyojit Teachers for equal pay for equal work which has always been held to be a constitutional obligation.

(vii) In fact, the obligation to raise money was on the State and it cannot be heard to raise a plea of budgetary constraint.

(viii) Rule 7 of 2010 Rules obliged the Central Government to prepare annual estimates of capital and recurring expenditure for carrying out the provisions of the Act for a period of 5 years. Raising of resources was integral to the functioning of and carrying out the obligations under the RTE Act.

He distinguished the decisions cited by the learned counsel appearing for State of Bihar and relied upon decisions of this Court in *Dhirendra Chamoli and Another vs. State of U.P*[36]*., Bhagwan Dass and others vs. State of Haryana and others*[37]*, Jaipal and others. vs. State of Haryana and others*[3]*, State of Punjab & others. vs. Jagjit Singh and others.*[2]. He submitted that education has always been at the core and of immense importance for advancement of a society and the State having failed to discharge its duty in ensuring non-discriminatory treatment to its teachers,

36 (1986) 1 SCC 637
37 (1987) 4 SCC 634

the Court may set to malaise right. He submitted that the drift of the submissions advanced by the State as well as the Union of India would mean that there ought not to be cadre of quality teachers.

37. Mr. C.A. Sundaram, learned Senior Advocate appeared for certain associations of teachers and submitted that it was not open to the State to plead and argue financial burden or difficulty in carrying out responsibility enjoined by the provisions of the constitution and particularly Article 21A of the Constitution. It was his submission that effectively Niyojit Teachers were made to carry the burden and pay for the constitutional goals which the States was obliged to achieve. He emphasized that nature of responsibility, qualifications, experience and duties discharged by Niyojit Teachers were at par with the Government Teachers that both the categories were discharging their functions and imparting education in same schools and as such there could be no distinction. He relied upon decisions of this Court in *Ashoka Kumar Thakur vs. Union of India and others.*[38], *Society for Unaided Private Schools of Rajasthan vs. Union of India and Another*[39], *Karnataka State Private College Stop-Gap Lecturers Association vs. State of Karnataka and Others*[40], *Baseeruddin M. Madari*

38 (2008) 6 SCC 1
39 (2012) 6 SCC 1
40 (1992) 2 SCC 29

and others. vs. State of Karnataka and Others[41]*, State of Uttar Pradesh and another vs. Anand Kumar Yadav and others*[42]

38. Mr. Vijay Hansaria, learned Advocate submitted that Article 21A was inserted by the 86th Constitutional Amendment Act on 12th December, 2002 but came into force on 01.04.2010. After enactment of the RTE Act on 26.08.2009, two notifications were issued on 16.02.2010. Under the first notification, the provisions of Article 21A were directed to come into force on 01.04.2010 while under the second notification the provisions of the RTE Act were directed to come into force on 01.04.2010. These developments indicate that though the Constitutional Amendment Act was passed in the year 2002, period of almost 8 years was given to the States to gear themselves up and cope up with the obligations which were to be discharged in terms of Article 21A read with the provisions of RTE Act. He emphasised that the idea of free and compulsory education first germinated in the decision in *Unni Krishnan, J.P. and others vs. State of Andhra Pradesh and others*[43]*,* which was later recommended in 165th Law Commission Report. The States thus had enough time at their disposal to equip themselves adequately to cope up with the obligations as aforesaid.

---

41 1995 Supp (4) SCC 111
42 (2018) 13 SCC 560
43 (1993) 1 SCC 645

He further submitted that under various enactments namely National Food Security Act, 2013, Juvenile Justice Act, 2015, Mahatma Gandhi National Rural Employment Guarantee Act, 2005. Child and Adolescent Labour (Prevention and Regulation) Act, 1986, separate funds are constituted and if budgetary constraints is the reason, a mandamus on the lines that was issued by this Court in *M.C. Mehta vs. State of T.N. and others*[44], could be issued. He also invited attention of the Court to the report of the Controller and Auditor General which indicated that substantial sums were collected as primary education cess and higher and secondary education cess. The information in that behalf available in para 2.3.3 of the Report of CAG for the year 2016-17 was as under:

> "2.3.3 Secondary and Higher Education Cess
> The Secondary and Higher Education Cess (SHEC) was introduced in the Finance Act, 2007, to fulfil the commitment of Secondary and Higher Education.
>
> Scrutiny of the Union Finance Accounts for the period 2006-07 to 2016-17 revealed that a total collection of SHEC of ₹ 83,497 core has been made and is being credited in the CFI without creating any reserve fund in Public Account.
>
> Unlike the creation of Prarambhik Siksha Kosh in the case of primary/elementary education cess, for the SHEC neither a Fund was designated to deposit the proceeds of SHEC nor were schemes identified on which the cess proceeds were to be spent. Consequently, the commitment of furthering Secondary and Higher Education Cess as envisaged in the Finance Act was not transparently ascertainable.

44 (1996) 6 SCC 756 para 29

> The matter of non-creation of Fund and non-dentification of schemes was raised in previous years' Report but the trend is persistent."

He also relied upon decision of this Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others*[45] (para 55).

39. Mr. Salman Khurshid, learned Senior Advocate submitted that the content of Right under Article 21A of the Constitution would be meaningless unless the role of a teacher was not considered in proper perspective. For a child to be given good quality education, the teachers must be well qualified and ensured decent wages. In his submission that would be the true import of Rule 20(3) of 2010 Rules and it was the responsibility of a State to garner resources. He relied upon extracts from a book[46] and particularly paragraphs 5 and 6 captioned "*Public Expenditure and Education Policy"*. The relevant extract which was relied upon was:-

> "While the development of low-cost schooling facilities has helped to expand the reach of elementary education in spite of widespread budgetary crises at the state level, gaping inadequacies remain (both in quantitative and qualitative terms) in the schooling infrastructure, as the findings mentioned in the preceding section indicate. Further, the trend towards increasing reliance on second-track education facilities has some troubling features. At least three serious issues arise in this context, related respectively to quality, equity and sustainability.
>
> The quality issue is concerned with the fact that teacher qualifications and infrastructural facilities are often poorer in second-track schooling facilities than in regular schools. In

45 (2006) 4 SCC 1

46 [*"India – Development and Participation"* by Jean Dreze and Amartya Sen]

> some cases there are also compensating features, especially greater accountability (e.g. due to better work incentives or closer community involvement), but the question remains whether these facilities can really be expected to deliver education of acceptable quality.
>
> The equity issue follows from that concern: if 'second-track' means 'second-rate', the expansion of alternative schooling facilities involves a real danger of diluting the right of underprivileged children to quality education. While these facilities might help them in the short term, this might be done at the risk of perpetuating the deep inequities of India's schooling system, whereby children of different social backgrounds have vastly different educational opportunities (not only in terms of the divide between government and private schools but now also within the framework of government schools."

40. Ms. Vibha Datta Makhija, learned Senior Advocate placed comparative chart of salary and emoluments drawn by Niyojit Teachers as against Government Teachers at various levels. She submitted that the introduction of Article 21A in the Constitution was not an exercise done overnight but considerable thought process had gone into, in making such Right a reality. Even after the introduction of Article 21A, substantial period of eight years was afforded to the States to equip themselves on every front. In her submission, Sections 23 and 25 of the Act ensure qualitative and quantitative aspects and if both the aspects are taken together it would be inevitable that the teachers must be in adequate numbers and also must have decent wages. According to her, there were three sets of guarantees available to Niyojit Teachers. *First,* under Article

41 of the Constitution, the *second* under Article 14 of the Constitution and the *third* under the provisions of the RTE Act, on the basis of which the Niyojit Teachers could rightfully claim parity in salary and emoluments. She relied upon the Report of the Finance Commission[47], the relevant portion being:-

> "12.19… ….The MHRD estimations have assumed a minimum salary of Rs.5000 per month for primary teachers and Rs.7000 per month for upper primary teachers. There is no uniform pattern in the manner of appointment and pay scales of SSA teachers across states. In some states such teachers are appointed by the State Government on regular pay scales, whereas in many others, such teachers are appointed by local governments on local body pay scales or on contract. The implementation of the Sixth Central Pay Commission (CPC) would, in any event, create an upward pressure on teachers' salaries, whatever the mode of appointment. We have, therefore, assumed an increase of 30 per cent over the base year, in view of the fact that the bulk of these teachers are located in rural areas. We have also provided for an annual increase of 6% on these salaries, in conformity with our assumption of the post-CPC yearly increase in salaries of government servants. Similarly, while SSA does not provide for any annual increase in the quantum of funds on account of inflation, we have provided for an annual increase of 5 per cent across all non-salary components of the scheme.
>
> 12.20 The SSA began with a matching fund requirement of 15 per cent from states in 2001-02. Till 2006-07, the matching fund requirement was 25 per cent. It has increased progressively to 35 per cent in 2007-08 and 2008-09 and to 40 per cent in 2009-10. It is expected to go up to 45 per cent in 2010-11 and to 50 per cent in 2011-12, the terminal year of the Eleventh Five Year Plan. We assume that the same ratio will continue in the

47 13th Finance Commission, for 2010-15 published in 2009

remaining years of the award period. Various states have expressed difficulties in providing this matching share, especially since the size of their annual plans has increased over the years.

12.21 We are of the view that, in the given circumstances augmenting the resources of the states to cater to this need will be the most appropriate way to provide grants for the elementary education sector. This will also provide some fiscal space to the states to meet a part of the additional resources required to implement the RTE Act. We have also considered the fact that given the resource scarcity faced by the states as a result of the economic slowdown, several states have not been able to provide for their share of 40 per cent in 2009-10. In fact, we estimate that due to the adverse fallout of the economic downturn, the states may not be able to provide more than 35 per cent from their resources over the current year and the next year. Hence, we recommend for the award period, a grant of 15 per cent of the estimated SSA expenditure of each state. This amount will cover the difference between the targeted state share of 50 per cent by the terminal year of the Eleventh Plan and the contribution required to be made in 2008-09, i.e. 35 per cent of the individual states' SSA share.

12.22 The north-eastern states are required to provide only 10 per cent from their resources as their share for SSA. However, as the MHRD has pointed out in a supplementary memorandum, several of these states have not been able to provide even this amount, leading to slowdown in implementation of SSA. In order to alleviate the fiscal constraints of these states we recommend a grant amounting to the difference between the average amount contributed by each state in the years 2007-08 and 2008-09 and the amount they need to contribute (on the basis of a 10 per cent share) in each of the five years of the award period, subject to a minimum of Rs.5 crore per year. The requirement of the north-eastern states, calculated on this basis, is Rs.367 crore over a period of five years.

12.23 The recommended grant for elementary education for all these states, in aggregate, works out to Rs.24,068 crore. The state-wise and year wise allocations

> are given in Annex 12.1. In order to ensure that these grants do not substitute for the current expenditure of states, we stipulate that the expenditure (plan + non plan) under elementary education, i.e. major head 2202, sub-major head-01, exclusive of the grants recommended herein, should grow by at least 8 per cent, the assumed growth rate in our projections of the non-salary component of the social sector during the award period, annually, during 2010-15."

Ms. Makhija then submitted that there had been three categories of teachers in the State, first category being that of regular teachers who are getting salary and emoluments at government pay scale. The second category was that of Shiksha Mitras who were inducted under Central Schemes since 2002. The third category of teachers are those who were inducted in terms of 2006 Rules. The second category as stated above, now stands merged in the last category and are collectively known as Niyojit Teachers. She relied upon decisions in *State of Gujarat and Another vs. Raman Lal Keshav Lal Soni and Others*[48], *State of U.P. and Others vs. Chandra Prakash Pandey and Others*[49], *Shayara Bano vs. Union of India and Others*[50], *E. P Royappa vs. State of Tamil Nadu and Another*[51].

---

48 (1983) 2 SCC 33
49 (2001) 4 SCC 78 para 10
50 (2017) 9 SCC 1
51 (1974) 4 SCC 3 para 85

Ms. Makhija also submitted that the distinction drawn by the learned Attorney General was artificial and without any nexus to the object. She further submitted that the State cannot let disparity continue and perpetuate inequality.

41. Mr. P. Chidambaram, learned Senior Advocate stressed on the content of the right under Article 21A and submitted that the emphasis must be on good quality education. He submitted that under Section 26 of the RTE Act, the vacancy position of teachers could not be more than 10% and as such the teachers had to be appointed in adequate numbers to match the Pupil-Teacher ratio as prescribed and it would not be proper on part of the State to put up an excuse of budgetary constraints. He further stated that under Section 28 of the Act, a teacher would not be allowed to engage himself in private teaching activity. He relied upon *State of Punjab and Others vs. Jagjit Singh and Others*[2], *Hussainara Khatoon and Others (IV) vs. Home Secretary, State of Bihar, Patna*[52], *Khatri and Others (II) vs. State of Bihar and Others*[53], *Ashoka Kumar Thakur vs. Union of India and Others*[38] *and Brij Mohan Lal vs. Union of India and*

52 (1980) 1 SCC 98 para 10
53 (1981) 1 SCC 627 para 5

Others[54]. Lastly, he urged that the right under Article 21A ought to be made meaningful.

42. Dr. A. M. Singhvi, learned Senior Advocate appeared on behalf of Bihar Madhyamik Shikshan Sangh representing those teaching classes IX onwards. According to him, the total liability in terms of the decision rendered by the High Court in the present matter was in the range or Rs.9283.69 Crores out of which the share allocable to the Central Government would be Rs.4599.07 crores and that of the State Government would be Rs.4684.63 crores. In a Note presented by him, the aspect that Niyojit Teachers were performing same/similar duties and responsibilities was highlighted as under:-

> "i) It is admitted fact that these Niyojit teachers are discharging same/similar duty and responsibility as discharged by the Regular teachers of Pre-2006 Rules. The impugned order has dealt it in detail and returned important finding on this issue in favour of these teachers at more than one place.
>
> ii) These Niyojit teachers are imparting education to the same students, with same syllabus in the same school apart form doing the same evaluation work in secondary and +2 examination conducted by the Bihar School Examination Board. At the time of evaluation, they are treated at par with and paid the same remuneration like the teachers appointed prior to 2006 Rules.
>
> iii) Moreover, these Niyojit teachers are also engaged by the State like Regular teachers in duties like duty for preparation of census (economic survey), Election duty

54 (2012) 6 SCC 502 paras 137 to 144

from preparation of voter list till counting of votes. Interestingly, while informing the Election Commission with regard to deploying these teachers on election duty, the State treats these Niyojit teachers as Regular teachers.

iv) These teachers like regular teachers are also engaged in imparting Special training namely 'Diploma in Elementary Training' provided by National Institute of Open Schooling (NIOS) Board, under Union of India, which is an on-going programme, wherein in a selected school of each district, Study Centre is opened to impart training. In these programmes these Niyojit teachers work as Coordinator, Assistant Co-ordinator, resource persons and Supervisors. Importantly, sometimes, when the minimum required qualification like MA/M.SC/B.Ed./M.Ed. is not found in the regular teacher, then Niyojit teachers with such qualifications are made Co-ordinator in place of regular teachers in that Study Centre.

v) Many of these Niyojit teachers are chosen as Master Trainers, who are responsible for imparting training to both category of teachers i.e. Niyojit Teachers and Regular Teachers. Pertinently, this training is conducted/organised by State Council of Educational Research and Training, Government of Bihar (SCERT similar to NCERT).

vi) Furthermore, such in-service training is part of a continuous process which includes preparation of Syllabus, Curriculum and innovative teaching method as well as these Niyojit teachers are also given responsibility of writing text books for students form class I to class XII under the command of SCERT.

vii) These Niyojit teachers are also engaged in setting of question papers, moderating, evaluating the answer sheets etc., at par with the regular teachers on equal remuneration.

viii) Responsibility of Acting Principals in substantial number of the Secondary and Higher Secondary schools are performed by these Niyojit teachers. Kindly see list of secondary and higher secondary schools wherein these Niyojit teachers are working as Acting Principal, however, receiving the salary of Niyojit teachers."

It was his submission that the cases decided by this Court on the touchstone of Article 14 of the Constitution consistently show that if functionally the duties performed by the class seeking parity are same or identical, unless required qualifications were higher, the equality doctrine must apply and in such cases the source of employment would be irrelevant. He also relied upon the statistics to show that as many as 1459 Niyojit Teachers were acting as Head Masters in Higher Secondary Schools in the State. By way of an example, he further submitted details from Anugrah Kanya S.S.S, Gaya in which six Government Teachers and three non-teaching staff were on the roles while 22 Niyojit Teachers were working in the same school. All Government Teachers and the non-teaching staff were drawing pay higher than what was paid to each of those Niyojit Teachers.

He also submitted that with effect from 3rd July, 2012, under the Rules framed by State of Bihar, it was obligatory for every teacher teaching classes IX onwards to have TET qualification and all Niyojit Teachers teaching such classes were equipped with said qualification. Responding to the submission that the category of Government Teachers who was taken to be a dying or finishing cadre, he submitted that no such policy was discernible from any statutory provision. He relied upon

decisions of this Court in *State of Gujarat and Another vs. Raman Lal Keshav Lal Soni and Others*[48] *and Arindam Chattopadhyay and Others vs. State of West Bengal and Others*[55].

43. Mr. C. S. Vaidyanathan, learned Senior Advocate also representing teachers teaching classes IX onwards submitted that two issues had been raised on behalf of the State whether there could be equality with a dying or vanishing cadre and whether on the grounds of financial constraints the State was justified in not affording same pay and emoluments to Niyojit Teachers. He reiterated that both the categories of teachers were performing same or similar functions. He relied upon an Article "Perceptions on Getting Children to Schools – Before and After RTE Act"[56].

44. Shri Ranjit Kumar, learned Senior Advocate appeared on behalf of Secondary and Higher Secondary teachers teaching classes IXth onwards. He also stressed the point that there was complete functional equality in every respect as regards duties and responsibilities between Government Teachers on one hand and Niyojit Teachers on the other. It was his submission that though under 2006 Rules, Panchayats and Municipal

---

55 (2013) 4 SCC 152 para 5 and 13

56 By Shantha Sinha, Department of Political Science, University of Hyderabad

Bodies were entrusted with the task of selecting teachers, in reality the Committees constituted for the purpose comprised of all government officials and the State Government was in real and effective control of the situation. He relied upon the decisions of this Court in *Bihar State Government Secondary School Teachers Association vs. Bihar Education Service Association and others*[57] particularly on para 50.

45. Shri Ananda Nandan, learned Advocate appeared on behalf of Niyojit Teachers who were appointed after 2012. It was submitted by him that such teachers who were duly qualified and had passed TET examination alone be considered to be entitled to parity with Government Teachers and those who did not have the requisite qualifications and had not passed TET examination ought not to be afforded same treatment. In his submission that would be the true import of the idea of making quality education available to the children in terms of the RTE Act. He also relied upon decision of this Court in *State of Uttar Pradesh and others vs. Shiv Kumar Pathak and others*[58].

46. Mr. V. Shekhar, learned Senior Advocate appeared on behalf of some primary school teachers and Parivartankaari Teachers Maha Sangh. He relied upon the decisions of this Court in *Municipal Council, Ratlam*

57 (2012) 13 SCC 33
58 (2018) 12 SCC 595

vs. Shri Vardichand and others[59]*, Secretary* and *Mahatama Gandhi Mission and another vs. Bhartiya Kamgar Sena and others*[60](paragraphs 82 to 90 and 95).

47. Mr. Prashant Bhushan, learned Advocate appearing for some of the primary teachers submitted that those teachers having TET qualifications, were regularly selected by local authorities and though, the method of recruitment may be different, they were doing the same work as was being discharged by other Government Teachers. Their qualifications were identical and in terms of mandate of Rule 20(3) of 2010 Rules, they were entitled to pay and allowances at par with the Government Teachers.

48. Mr. Rajiv Dhawan, learned Senior Advocate appearing for certain secondary and primary teachers submitted that the statutory provisions including 2006 Rules clearly showed the all-pervasive role of the State Government which had created these artificial distinctions and categories and the Panchayats were simply implementing what the State had decided. In his submission the basic issues were whether there could be any discretion unto the State in matters concerning constitutional mandate and whether financial constraints could be taken as a valid excuse. He

59 (1980) 4 SCC 162
60 (2017) 4 SCC 449

reiterated the submission that under Section 7 of the RTE Act there was a concurrent financial responsibility on the State Government as well as the Central Government. Adverting to the draft Notes which were placed before the Cabinet on 25.06.2006, he submitted that the entire mechanics was about financial arrangement and there was nothing such as financial constraints upon the State. He relied upon decisions of this Court in *Mohini Jain vs. State of Karnataka and others*[61], *Unni Krishnan, J.P. and others vs. State of Andhra Pradesh and others*[43] and *State of Himachal Pradesh vs. H.P. State Recognised & Aided Schools Managing Committees and others*[62]

49. Mr. Sanjay Hegde, learned Senior Advocate appearing for some of the primary teachers submitted that as it is the income of a teacher has always been a limited one and the attempt on part of the State was to restrict it further. Relying on *Workmen represented by Secretary vs. Reptakos Brett. & Co. Limited and another*[63] it was submitted that the teachers must be ensured living wages and that the Niyojit Teachers were entitled to the salary and emoluments as were made available to Government Teachers. He also relied upon decisions of this Court in

61 (1992) 3 SCC 666
62 (1995) 4 SCC 507
63 (1992) 1 SCC 290

Municipal Council, Ratlam vs. Shri Vardichand and others[59] and *Chandigarh Administration and others vs. Rajni Vali and others*[64].

50. Mr. B.P. Verma, learned Senior Advocate appeared on behalf of certain teachers seeking impleadment and relied upon the decision of this Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others*[45] (para 55), while Mr. V.N. Sinha, learned Senior Advocate for some primary and secondary teachers as well as librarians relied upon a decision of this Court in *Maneka Gandhi vs. Union of India and another*[65] to submit that there ought to be reasonableness in every action of the State. Adopting the submissions made by all the other learned counsel, it was submitted by them that Niyojit Teachers were entitled to same salaries and emoluments as were given to Government Teachers.

51. In rejoinder, it was submitted by Mr. Dinesh Dwivedi, learned Senior Advocate that a conscious decision was taken not to make any further appointments in the cadre of Government Teachers and but for one-time appointment which was done pursuant to orders passed by the High Court and this Court, the strength of Government Teachers would have been considerably lower. The State could as well have abolished all the posts held by Government Teachers after giving them requisite

64 (2000) 2 SCC 42
65 (1978) 1 SCC 248

compensation and in the process could have ensured one single cadre of Niyojit Teachers. The attempt to compare a huge body of Niyojit Teachers which was more than 4.50 lakhs and seek parity with a group which was a dying or vanishing cadre was not correct. He submitted that there was no basis to claim that the quality of education would be compromised if Niyojit Teachers were not paid same salary as was given to Government Teachers. The decisions of this Court in *State of Punjab vs. Joginder Singh*[28] and in *Zabar Singh and others vs. State of Haryana and others*[29], *S.C. Chandra and others vs. State of Jharkhand and others*[11], *State of Haryana vs. Charanjit Singh*[4] and *State of Haryana and another vs. Tilak Raj and others*[66] were heavily relied upon by Mr. Dwivedi. It was submitted that the decision in *State of Punjab and others vs. Jagjit Singh and others*[2] did not notice the earlier decisions of this Court in *State of Punjab vs. Joginder Singh*[28] and in *Zabar Singh and others vs. State of Haryana and others*[29]. It was submitted that the decision in *State of Punjab vs. Joginder Singh*[28] had clearly laid down that the principle of *'equal pay for equal work'* was not deducible from Article 14 of the Constitution. Reliance was also placed on Section 2(n) of the RTE Act and the expression '*controlled by the appropriate government or a local body'* to submit that it was sufficient indication that new kind of service could be

66 (2003) 6 SCC 123

put in place by the appropriate government. He submitted that the Right under Article 21A of the Constitution was child-centric and a claim could not be based by the Niyojit Teachers on the basis of such Right to claim parity as was sought to be done. Reliance was placed on the decisions of this Court in *All India Bank Employees' Association vs. National Industrial Tribunal and others*[67], *Society for Unaided Private Schools of Rajasthan vs. Union of India and another*[39].

52. Mr. Shyam Divan, learned Senior Advocate, in rejoinder, relied upon the judgment of Constitution Bench of this Court in *Navtej Singh Johar and others vs. Union of India through Secretary, Ministry of Law and Justice*[68] and paragraphs 95, 96, 104, 110, 118 and 119 thereof. In his submission, progressive realisation of rights would require certain amount of balancing and adjustment. If the matter was to be considered from the standpoint of child, the school system ought to be of such order which helps realisation of such Right but, at the same time there ought not to be any negative impact on the dignity of any other individual. Considering these two ideas, if the endeavour adopted by the State was to subserve goals set by Article 21A, the attempts in that behalf would be perfectly constitutional as long as dignity of any other individual was not

67 (1962) 3 SCR 269 = AIR 1962 SC 171
68 (2018) 10 SCC 1

compromised. According to him, the two competing visions which were pressed into service in the present matter were *(i)* on behalf of Niyojit Teachers which visualised perspective from the standpoint of individual teachers which was *"me first" approach*, whereas, what the State was emphasising was community right and to achieve and to subserve the societal needs which could be categorised as "*we first" approach*. Both could be valid visions but while considering which choice would be the most appropriate one, it would require policy decisions which, by very nature could be complex. The policy decisions on the point would be completely linked to social issues and economy and health of the society. These issues as well as vision in that behalf ought to be left to the State. He further submitted that the various factual details presented by the State would show great impact of its policies and the tremendous strides the State had undertaken in that behalf. He relied upon decisions of this Court in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and others vs. The State of Gujarat and others*[69](para 31), *Assam Sanmilita Mahasangha and others vs. Union of India and others*[70] (para 33) and *Subramanian Swamy vs. Union of India, Ministry of Law and others*[71].

---

69 (1975) 1 SCC 11
70 (2015) 3 SCC 1
71 (2016) 7 SCC 221

53. With the permission of the Court, Mr. Sibal, Mr. Sundaram, Mr. Vijay Hansaria and Mr. Ranjit Kumar, learned Senior Advocates responded to the submissions made in rejoinder. It was submitted that the very premise that the schools were managed by local authorities was wrong; they were taken over and owned by the State. It was submitted that the concept of *'equal pay for equal work'* was a fundamental doctrine though may not strictly be a Fundamental Right. Mr. Hansaria submitted a list of at least 40 cases where doctrine of *'equal pay for equal work'* was adopted without noticing the decisions of this Court in *State of Punjab vs. Joginder Singh*[28] and in *Zabar Singh and others vs. State of Haryana and others*[29].

It was also submitted that as against the funds which were made available for various Central Schemes, about Rs.1802 crores were lying unspent and as such the budgetary constraints could not be an argument. By extending schools and educational facilities to every nook and corner of the State or in every neighbourhood the State was not doing any charity but was discharging its constitutional obligations and as such, budgetary constraints could never be a ground.

54. Having heard the learned counsel extensively, who took us through all the relevant material on record and placed before us various contours of

the issues before us, the basic questions that arise for our consideration are:-

a) Whether the Niyojit Teachers are right in their submission that they are entitled to and were rightly granted 'equal pay for equal work'; and

b) Whether the State is justified in its approach and is right in claiming that the distinction made by it was correct and fair.

These questions, according to us, go to the root of the matter. While answering these questions, we may also consider various facets to the issues as presented by various counsel, including the effect of the provisions of the RTE Act.

55. According to the learned counsel appearing for the State, the matter has to be seen in the backdrop of what the State was confronted with around the year 2001-2002 and what it has, over the last few years, been able to achieve as a result of steps taken by the State including the appointment of Niyojit Teachers and creation of a separate cadre of Niyojit Teachers. According to the State, on one hand it had decided to let the original cadre of Government Teachers to be a cadre without any fresh

appointments and thus let it be a dying or vanishing cadre, while on the other hand it had decided that substantial number of teachers be appointed at Panchayat levels.

56. At the outset we must note that though the 86th Constitution Amendment Act was passed in the year 2002, the Article was brought into force on 1.4.2010 i.e. at least after eight years. It is also a matter of record that the RTE Act which was, all the while in contemplation, was enacted in the year 2009 and was also brought into force on 1.4.2010. The developments in that behalf including the historical background leading to the introduction of Article 21A and the enactment of the RTE Act were dealt with in extenso in paragraphs 441 to 461 in the opinion of Bhandari, J in *Ashoka Kumar Thakur vs. Union of India*[38]. We, therefore, have to see how the State had conducted itself and whether the steps taken by the State were in order to discharge its obligations.

In the year 2002 itself, Scheme known as Sarva Shiksha Abhiyan was introduced at the Central level. In terms of the Scheme, the facilities of education and infrastructure were required to be spread through the length and breadth of the respective States. The steps taken in that behalf, specially in the present matter, indicate that sometime in 2002 more than

one lakh Shiksha Mitras were appointed by the State. These Shiksha Mitras were not part of the regular cadre of Government Teachers, were not appointed through the regular process of selection and their services were engaged on a fixed salary. These Shiksha Mitras, who were outside the regular cadre of teachers, were entrusted with the job of manning schools in the remotest corners of the State. Sometime in 2006, certain decisions were taken by the Cabinet of Ministers, Government of Bihar. The control in respect of appointment of teachers in all nationalized schools and other aspects, which were hithertobefore with the State Government, were given over to various Panchayat Raj institutions. This was in conformity with Articles 243G read with Serial No. 17 of the Eleventh Schedule in respect of Panchayats at the village, intermediate and at district levels and also in terms of Article 243W read with Serial No.13 of the Twelfth Schedule in respect of Nagar Panchayats, Municipal Councils or Municipal Corporations. The decisions taken by the Cabinet were in accord with the constitutional mandate of enabling Panchayat Raj Systems on one hand while on the other, the decision also raised the number of teachers substantially so that national parameters on student:teacher ratio could be achieved by the State. The statistics placed on record show that about 12% children in the State who were outside the

schools had to be brought within the stream of education. The decision discernible from the Cabinet Notes was to achieve these objectives. After the decision of the Cabinet, the idea was translated in an appropriate statutory regime and new set of Rules viz. 2016 Rules were put in place. A decision was taken that there would be no further appointments in the cadre of existing teachers viz. Government Teachers and a completely new cadre of teachers named Niyojit Teachers was created. The erstwhile Shiksha Mitras were absorbed in this new cadre of Niyojit Teacher and fresh employments were made at Panchayat/Block levels so that teachers in sufficient numbers could be appointed. The developments indicate that presently about four lakh such teachers have been appointed and the statistics presented by the State, which are reflected in detail in abovenoted paragraph 31, show the advances made by the State in that behalf. It was submitted that the State could thus achieve substantial improvement in the enrolment of students and the results have also seen appreciable rise in literacy rate in the last decade in respect of the State.

57. We are thus having a situation where the decisions taken by the State as submitted on its behalf, were guided by public interest and societal commitment. The idea to achieve spread of education to the maximum level was attained and in the process the State had, to a great extent, tried

to meet with the obligations that it was required to discharge under the provisions of Article 21A read with the RTE Act. What has however been projected on behalf of Niyojit Teachers is that while achieving these objectives, the State ought not to have discriminated against the Niyojit Teachers and should have extended fair treatment to them by ensuring 'equal pay for equal work'. The arguments on behalf of State are that the first objective that had to be accomplished was to have the reach and spread of education to every nook and corner of the State and to satisfy the requirements of having schools and facilities in every neighbourhood as contemplated by the provisions of the RTE Act; and having achieved that objective, the State is now seeking to improve the service conditions and emoluments of the Niyojit Teachers. What therefore emerges is whether the actions on part of the State were justified or whether the Niyojit Teachers are right in their submission that they are entitled to 'equal pay for equal work'.

58. Before we consider the rival submissions in connection with this issue, it must be mentioned that the cadre of Government Teachers with which parity or equality has been sought is a dying or a vanishing cadre. A conscious decision was taken by the State not to make any appointments in this cadre of Government Teachers and post 2006, with the exception as

narrated hereinabove in paragraph 17, all appointments in the State have been in terms of and under the provisions of 2006 Rules. The statistics also show that presently there are about 57,293 elementary teachers in the cadre of Government Teachers and 7,800 Government Teachers at the secondary level which means there are about 66,000 government teachers in the State as against nearly 4 lakh Niyojit Teachers in the State. It is this group of 4 lakhs which is seeking parity with a number which is less than 1/5th and by very nature which is a dying and vanishing cadre. Out of those 66,000 more than 31,000 were those who came to be appointed as one-time exception. Leaving aside that issue, the fact remains that it is a larger body of more than 4 lakhs which is seeking parity with a dying or a vanishing cadre.

59. In order to consider the applicability of the doctrine of 'equal pay for equal work', one of the fundamental aspects to be considered is nature of duties. As was rightly submitted by Mr. Kabil Sibal and Dr. A.M. Singhvi, learned Senior Advocates, the nature of duties performed by Niyojit Teachers are certainly same or similar to those performed by the Government Teachers. As a matter of fact, both the sets of teachers are teaching in the same school and teaching same syllabus. The pointers placed by Dr. Singhvi in his submission as well as the example given by

him evidently show that there is no distinction or difference as regards nature of duties performed and responsibilities discharged by the Niyojit Teachers. Some of the Niyojit Teachers have also been acting as Headmasters. However, the Rules in question viz. 2006 Rules clearly indicate that the method of recruitment of Niyojit Teachers was completely different from the one under which Government Teachers were recruited. The Selection Committee contemplated under the provisions of 2006 Rules comprised of officials at the Panchayat or Block levels. The selection was also at local levels and not through Bihar Public Service Commission or Schools Selection Board. The distinction brought out in that behalf by the State in para 13 of its supplementary counter affidavit filed in the High Court clearly shows the difference in mode of recruitment. It is thus clear that the mode of recruitment and the standards of selection were different but the nature of duties performed by the Niyojit Teachers have been absolutely identical. Could there be a distinction between these two streams of teachers. We may, therefore, at this stage see the development of the doctrine of 'equal pay for equal work' and whether it admits of any qualifications or exceptions.

60. In *Kishori Mohanlal Bakshi vs. Union of India*[72] the Income Tax Officers were divided into two categories and Class-I Income Tax Officers alone were entitled to be considered for promotion to the posts of Commissioners and Assistant Commissioners. There could be no such direct promotion from amongst officers who were Income Tax Officers Class-II. The submission that this was violative of Article 16(1) of the Constitution was rejected. Further submission was that both the categories were doing same kind of work but their pay-scales were different and as such the doctrine of 'equal pay for equal work' stood violated. While considering said submission, the Constitution Bench stated:-

> "3. The only other contention raised is that there is discrimination between class I and Class I Officers inasmuch as though they do the same kind of work their pay-scales are different. This, it is said, violates article 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with article 14. The contention that article 14 of the constitution has been violated therefore also fails."

61. Almost 20 years later, the doctrine of 'equal pay for equal work' was accepted by this Court in *Randhir Singh vs. Union of India and others*[31]. A Bench of three Judges stated that though the principle of

---

72 AIR 1962 SC 1139

'equal pay for equal work' had not expressly been declared by the Constitution to be a Fundamental Right, it was certainly a constitutional goal. The discussion was as under:-

> **"7.** Our attention was drawn to *Binoy Kumar Mukerjee* v. *Union of India* ILR (1973) 1 Del 427 and *Makhan Singh* v. *Union of India* ILR (1975) 1 Del 227, where reference was made to the observations of this Court in *Kishori Mohanlal Bakshi* v. *Union of India* AIR 1962 SC 1139 describing the principle of "equal pay for equal work" as an abstract doctrine which had nothing to do with Article 14. We shall presently point out how the principle, "equal pay for equal work", is not an abstract doctrine but one of substance. *Kishori Mohanlal Bakshi* v. *Union of lndia* AIR 1962 SC 1139 is not itself of any real assistance to us since what was decided there was that there could be different scales of pay for different grades of a service. It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of "equal pay for equal work" would be an abstract doctrine not attracting Article 14 if sought to be applied to them.
>
> **8.** It is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(*d*) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy. "Equal pay for equal work for both men and women" means equal pay for equal work for everyone and as between the sexes. directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all

citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The Preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "socialist" must mean something. Even if it does not mean 'to each according to his need', it must at least mean "equal pay for equal work". "The principle of "equal pay for equal work" is expressly recognized by all socialist systems of law, e.g., Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide *International Labour Law* by Istvan Szaszy, p. 265). The Preamble to the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the

> peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39 (*d*), we are of the view that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.
>
> **9.** There cannot be the slightest doubt that the drivers in the Delhi Police Force perform the same functions and duties as other drivers in service of the Delhi Administration and the Central Government. If anything, by reason of their investiture with the "powers, functions and privileges of a police officer", their duties and responsibilities are more arduous. In answer to the allegation in the petition that the driver-constables of the Delhi Police Force perform no less arduous duties than drivers in other departments, it was admitted by the respondents in their counter that the duties of the driver-constables of the Delhi Police Force were onerous. What then is the reason for giving them a lower scale of pay than others? There is none. The only answer of the respondents is that the drivers of the Delhi Police Force and the other drivers belong to different departments and that the principle of "equal pay for equal work" is not a principle which the courts may recognise and act upon. We have shown that the answer is unsound. The clarification is irrational. We, therefore, allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force. The scale of pay shall be effective from January 1, 1973, the date from which the recommendations of the Pay Commission were given effect."

62. Post *Randhir Singh*[31], there have been number of decisions rendered by this Court and instead of looking into and considering every single decision on the point, we may consider those decisions which themselves had taken into account all the earlier decisions and then

considered if there are any limitations or qualifications to the doctrine of 'equal pay for equal work'.

63. In *State of Haryana and others vs. Charanjit Singh and others*[4] a Bench of three Judges of this Court, speaking through Variava, J. observed as under:-

> **"19.** Having considered the authorities and the submissions we are of the view that the authorities in the cases of *Jasmer Singh (1996) 11 SCC 77*, *Tilak Raj (2003) 6 SCC 123*, *Orissa University of Agriculture & Technology* (2003) 5 SCC 188 and *Tarun K. Roy* (2004) 1 SCC 347 lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and

> even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

64. In *SC Chandra and others vs. State of Jharkhand and others*[11] Markandey Katju, J. in his concurring opinion observed as under:-

> **"33.** It may be mentioned that granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities. Hence, the court should exercise judicial restraint and not interfere in such executive function vide *Indian Drugs & Pharmaceuticals Ltd.* v. *Workmen (2007)1 SCC 408*.
>
> ... ...
>
> **35.** In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between

> the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, *unless there is complete and wholesale identity between the two groups* (and there too the matter should be sent for examination by an Expert Committee appointed by the Government instead of the court itself granting higher pay).
>
> **36.** It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide *Govt. of W.B.* v. *Tarun K. Roy (2004) 1 SCC 347*.
>
> **37.** Similarly, in *State of Haryana* v. *Haryana Civil Secretariat Personal Staff Assn.* (2002) 6 SCC 72the principle of equal pay for equal work was considered in great detail. In paras 9 and 10 of the said judgment the Supreme Court observed that *equation of posts and salary is a complex matter which should be left to an expert body*. The courts must realise that the job is both a difficult and time consuming task which even experts having the assistance of staff with requisite expertise have found it difficult to undertake. Fixation of pay and determination of parity is a complex matter *which is for the executive to discharge*. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences vide *Union of India* v. *Pradip Kumar Dey (2000) 8 SCC 580*."

65. In *Official Liquidator vs. Dayanand and others*[12] Singhvi, J. speaking for a Bench of three Judges observed as under:-

> **"94.** The principle of equal pay for equal work for men and women embodied in Article 39(*d*) was first considered in *Kishori Mohanlal Bakshi* v. *Union of India* AIR 1962 SC 1139 and it was held that the said principle is not capable of being enforced in a court of law. After 36 years, the issue was again considered in *Randhir Singh* v. *Union of India (1982) 1 SCC 618*, and it was unequivocally ruled that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the

doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India.

95. The ratio of *Randhir Singh* v. *Union of India* (1982) 1 SCC 618 was reiterated and applied in several cases— *Dhirendra Chamoli* v. *State of U.P.* (1986) 1 SCC 637, *Surinder Singh* v. *CPWD* (1986) 1 SCC 639, *Daily Rated Casual Labour* v. *Union of India* (1988) 1 SCC 122, *Dharwad Distt. PWD Literate Daily Wage Employees Assn.* v. *State of Karnataka* (1990)2 SCC 396 and *Jaipal* v. *State of Haryana* (1988) 3 SCC 354 and it was held that even a daily-wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in *Federation of All India Customs and Central Excise Stenographers* v. *Union of India* (1988) 3 SCC 91, *Mewa Ram Kanojia* v. *AIIMS* (1989)2 SCC 235, *V. Markendeya* v. *State of A.P* (1989) 3 SCC 191, *Harbans Lal* v. *State of H.P.*(1989) 4 SCC 459, *State of U.P.* v. *J.P. Chaurasia* (1989) 1 SCC 121, *Grih Kalyan Kendra Workers' Union* v. *Union of* India(1991)1 SCC 619, *GDA* v. *Vikram* Chaudhary(1995) 5 SCC 210, *State of Haryana* v. *Jasmer Singh* (1996) 11 SCC 77, *State of Haryana* v. *Surinder Kumar* (1997) 3 SCC 633, *Union of India* v. *K.V.* Baby (1998) 9 SCC 252, *State of Orissa* v. *Balaram* Sahu (2003) 1 SCC 250, *Utkal University* v. *Jyotirmayee Nayak* (2003) 4 SCC 760 , *State of Haryana* v. *Tilak* Raj (2003) 6 SCC 123, *Union of India* v. *Tarit Ranjan* Das (2003) 11 SCC 658 , *Apangshu Mohan Lodh* v. *State of Tripura (2004) 1 SCC 119*, *State of Haryana* v. *Charanjit Singh (2006) 9 SCC 321*, *Hindustan Aeronautics Ltd.* v. *Dan Bahadur Singh (2007) 6 SCC 207*, *Kendriya Vidyalaya Sangathan* v. *L.V. Subramanyeswara (2007) 5 SCC 326* and *Canteen Mazdoor Sabha* v. *Metallurgical & Engg. Consultants (India) Ltd. (2007) 7 SCC 710*, the Court consciously and repeatedly deviated from the ruling of *Randhir Singh* v. *Union of India (1982) 1 SCC 618* and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience, confidentiality, functional need, etc.

… … …

> **99.** In *Canteen Mazdoor Sabha* v. *Metallurgical & Engg. Consultants (India) Ltd (2007) 7 SCC 710* another two-Judge Bench held that simply because some employees of a contractor of the alleged head employer are performing the task or duties similar to the employees of the head employer, it will not entitle such employees to claim parity.
>
> **100.** As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor were they paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the Offices of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the Offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company-paid staff in the regular pay scale from the Consolidated Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits on a par with regular employees by applying the principle of equal pay for equal work."

66. In *State of Punjab and another vs. Surjit Singh and others*[13] Sinha, J. considered all the relevant decisions on the point and stated as under:-

> "8. Before us, the learned counsel urged that on analysis of the decisions rendered by this Court, the following legal positions emerge. We would deal with them in seriatim and as put forward by the learned counsel:

(*1*) Mode and manner of selection can be a ground of classification. In *S.C. Chandra* v. *State of Jharkhand(2007) 8 SCC 279* it has been held: (SCC pp. 290-91, paras 27 & 30)

"*27*. Thus, in *State of Haryana* v. *Tilak Raj(2003) 6 SCC 123* it was held that the principle can only apply if there is *complete and wholesale identity* between the two groups. *Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g.* a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

* * *

30. In *State of U.P.* v. *Ministerial Karamchari Sangh (1998) 1 SCC 422* the Supreme Court observed that *even if persons holding the same post are performing similar work but if the mode of recruitment, qualification, promotion, etc. are different it would be sufficient for fixing different pay scale*. Where the mode of recruitment, qualification and promotion are totally different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work."

(emphasis in original)

In a given case, mode of selection may be considered as one of the factors which may make a difference. (See *State of Haryana* v. *Charanjit Singh(2006) 9 SCC 321*, SCC para 15.)

(*2*) A daily wager working for a long time should be granted pay on the basis of the minimum of a pay scale. Reliance in this behalf has been placed on *State of Karnataka* v. *Umadevi (3)(2006) 4 SCC 1*. It was furthermore urged that this Court should follow the principle laid down by the Constitution Bench in *Umadevi* as such a relief had been granted by it in respect of daily wagers of the Commercial

> Taxes Department. The learned counsel submitted that this Court lately, although made a distinction between a direction to regularise the employees who had been working for some time, but keeping in view the constitutional mandate contained in Article 39-A of the Constitution of India directed grant of a salary on a scale of pay, particularly in cases where the conduct of the State had been found to be unreasonable, unjust and prejudiced.
>
> **... ... ...**

17. We must also place on record the fact that in different phases of development of law by this Court, relying on or on the basis of the said principle, a clear cleavage of opinion has emerged. Whereas in the 1970s and 1980s, this Court liberally applied the said principle without insisting on clear pleadings or proof that the persons similarly situated with others are equal in all respects; of late also; this Court has been speaking in different voices as would be evident from the following. This has been noticed specifically by a Division Bench of this Court in *S.C. Chandra* v. *State of Jharkhand(2007) 8 SCC 279*, wherein it was held: (SCC p. 289, para 21)

> "*21*. Learned counsel for the appellants have relied on Article 39(*d*) of the Constitution. Article 39(*d*) does not mean that all the teachers working in the school should be equated with the clerks in BCCL or the Government of Jharkhand for application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of BCCL. The question of application of Article 39(*d*) of the Constitution has recently been interpreted by this Court in *State of Haryana* v. *Charanjit Singh(2006) 9 SCC 321* wherein Their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed

discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in *Charanjit Singh(2006) 9 SCC 321* all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of pay with that of the clerks of BCCL."

18. Katju, J. in his separate but concurrent judgment opined as under: (*S.C. Chandra case (2007) 8 SCC 279*, SCC pp. 290 & 293-94, paras 26 & 35)

"*26*. Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect. Hence, in subsequent decisions of this Court the principle of equal pay for equal work has been considerably watered down, and it has hardly ever been applied by this Court in recent years.

* * *

35. In our opinion fixing pay scales by courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between the three organs of the State. Realising this, this Court has in recent years avoided applying the principle of equal pay for equal work, *unless there is complete and wholesale identity between the two groups* (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the court itself granting higher pay)."

19. The Bench in *S.C. Chandra case (2007) 8 SCC 279* in arriving at the said finding specifically relied upon a three-Judge Bench decision of this Court in *Charanjit Singh(2006) 9 SCC 321*, wherein it was held: (*Charanjit Singh case*, SCC pp. 329-30 & 334-36, paras 9, 17, 19 & 22)

"*9*. In *State of Haryana* v. *Tilak Raj(2003) 6 SCC 123* it has been held that the principle of equal pay for equal work is not always easy to apply. It has been held that there are inherent difficulties in comparing and evaluating the work of different persons in different organisations or even in the same organisation. It has been held that this is a concept which requires, for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been held that the problem about equal pay cannot be translated into a mathematical formula. It was further held as follows: (SCC p. 127, para 11)

'*11*. A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.'

* * *

17. In *Bhagwan Dass* v. *State of Haryana(1987) 4 SCC 634* this Court held that if the duties and functions of the temporary appointees and regular employees are similar, there cannot be discrimination in pay merely on the ground of difference in modes of selection. It was held that the burden of proving similarity in the nature of work was on the aggrieved worker. We are unable to agree with the view that there cannot be discrimination in pay on the ground of differences in modes of selection. As has been correctly laid down in *Jasmer Singh case (1996) 11 SCC 77* persons selected by a Selection Committee on the

basis of merit with due regard to seniority can be granted a higher pay scale as they have been evaluated by the competent authority and in such cases payment of a higher pay scale cannot be challenged. *Jasmer Singh case* has been noted with approval in *Tarun K. Roy case (2004) 1 SC 347*.

19. Having considered the authorities and the submissions we are of the view that the authorities in *Jasmer Singh (1996) 1 SC 77*, *Tilak Raj (2003) 6 SCC 123*, *Orissa University of Agriculture & Technology (2003) 5 SCC 188* and *Tarun K. Roy (2004) 1 SCC 347* lay down the correct law. Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service.

The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.

* * *

22. One other fact which must be noted is that Civil Appeals Nos. 6648, 6647, 6572 and 6570 of 2002 do not deal with casual or daily-rated workers. These are cases of persons employed on contract. To such persons the principle of equal pay for equal work has no application. The Full Bench judgment dealt only with daily-rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In *State of Haryana* v. *Surinder Kumar(1997) 3 SCC 633* persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly

> selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging the same duties. It was held that the very object of selection is to test the eligibility and then to make appointment in accordance with the rules. It was held that the respondents had not been recruited in accordance with the rules prescribed for recruitment."

… … …

24. It is no longer in doubt or dispute that grant of the benefit of the doctrine of "equal pay for equal work" depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. This Court, even recently, in *Union of India* v. *Mahajabeen Akhtar (2008) 1 SCC 368*, categorically held as under: (SCC pp. 376-77, paras 19 & 24)

> "*19*. The question came to be considered in a large number of decisions of this Court wherein it unhesitatingly came to the conclusion that a large number of factors, namely, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment, etc. will be relevant for determining equivalence in the matter of fixation of scale of pay. (See *Finance Deptt.* v. *W.B. Registration Service Assn.1993 Supp (1) SCC 153*, *State of U.P.* v. *J.P. Chaurasia (1989) 1 SCC 121*, *Union of India* v. *Pradip Kumar Dey (2000)8 SCC 580* and *State of Haryana* v. *Haryana Civil Secretariat Personal Staff Assn. (2002) 6 SCC 72*)
>
> * * *
>
> *24*. On the facts obtaining in this case, therefore, we are of the opinion that the doctrine of equal pay for equal work has no application. The matter may have been different, had the scales of pay been determined on the basis of educational qualification, nature of duties and other relevant factors. We are also not oblivious of the fact that ordinarily the scales of pay of employees working in different departments should be treated to be on a par and the same scale of pay shall be recommended. The respondent did not opt for her

services to be placed on deputation. She opted to stay in the government service as a surplus. She was placed in list as Librarian in National Gallery of Modern Art. She was designated as Assistant Librarian and Information Assistant. Her pay scale was determined at Rs 6500-10,500 which was the revised scale of pay. Her case has admittedly not been considered by the Fifth Pay Revision Commission. If a scale of pay in a higher category has been refixed keeping in view the educational qualifications and other relevant factors by an expert body, no exception thereto can be taken. Concededly it was for the Union of India to assign good reasons for placing her in a different scale of pay. It has been done. We have noticed hereinbefore that not only the essential educational qualifications are different but the nature of duties is also different. Article 39(*d*) as also Article 14 of the Constitution of India must be applied, inter alia, on the premise that equality clause should be invoked in respect of the people who are similarly situated in all respects."

How the said principle is to be applied in different fact situation is the only question. Whereas this Court refused to apply the said principle as the petitioners therein did not have the requisite qualification; in *Union of India* v. *Dineshan K.K (2008) 1 SCC 586*, the application of the rule was advocated to be left to an expert body, stating: (*Dineshan K.K. case)* SCC pp. 592-93, para 16)

> "*16*. Yet again in a recent decision in *State of Haryana* v. *Charanjit Singh(2006) 9 SCC 321* a Bench of three learned Judges, while affirming the view taken by this Court in *State of Haryana* v. *Jasmer Singh (1996) 11 SCC 77*, *Tilak Raj (2003) 6 SCC 123*, *Orissa University of Agriculture & Technology* v. *Manoj K. Mohanty (2003) 5 SCC 188* and *Govt. of W.B.* v. *Tarun K. Roy (2004) 1 SCC 347* has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the

> principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled."

> **25.** It may be that in *Charanjit Singh (2006) 9 SCC 321*, Variava, J., speaking for the three-Judge Bench, has used the word "may" in regard to the source of recruitment but the same has to be considered as a relevant factor as the operative part of the judgment shows. *Charanjit Singh*, therefore, does not militate against the other decisions of this Court where the mode and manner of appointment has been considered to be a relevant factor for the purpose of invocation of the said doctrine. We are bound by the aforementioned three-Judge Bench decision."

67. In *Steel Authority of India Limited and others vs. Dibyendu Bhattacharya*[14] Dr. Chauhan, J. stated:

> **"23.** This Court while deciding a similar issue in *State of W.B.* v. *W.B. Minimum Wages Inspectors Assn. (2010) 5 SCC 225*, held as under: (SCC p. 232, paras 18-20)
>
> > "*18*. … The evaluation of duties and responsibilities of different posts and

determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts.

19. The principle 'equal pay for equal work' is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. *Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees*.

20. The burden to prove disparity is on the employees claiming parity…."

… … …

30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(*d*) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.

31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The Expert Committee has to decide such issues, as the

> fixation of pay scales, etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible for administration i.e. service conditions, etc. is found to be bona fide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the court should avoid applying the principle of equal pay for equal work".

68. Analysis of the decisions referred to above shows that this Court has accepted following limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work':-

i) The doctrine of 'equal pay for equal work' is not an abstract doctrine.

ii) The principle of 'equal pay for equal work' has no mechanical application in every case.

iii) The very fact that the person has not gone through the process of recruitment may itself, in certain cases, makes a difference.

iv) The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job.

v) Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

vi) Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

vii) Equation of posts and salary is a complex matter which should be left to an expert body.

viii) Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

ix) Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

x) In a given case, mode of selection may be considered as one of the factors which may make a difference.

69. The latest decision on which heavy reliance was placed on behalf of Niyojit Teachers is the one rendered by a Bench of two Judges in *State of Punjab and others vs. Jagjit Singh and others*[2]. The issues that arose for consideration were set out in para 5 as under:-

"5. The issue which arises for our consideration is: whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts? The Full Bench (Avtar Singh vs. State of Punjab, 2011 SCC Online P & H 15326) of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay scale, merely for reason, that the activities carried on by daily wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the Full Bench of the High Court in the impugned judgment are extracted hereunder: (*Avtar Singh case*, SCC OnLine P&H para 37)

> "(*1*) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.
>
> (*2*) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularisation, if any, may have to be considered separately in terms of legally permissible scheme.

> (*3*) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months."

70. While considering the aforesaid issue this Court had noted all the decisions on the point of pay parity from *Randhir Singh vs. Union of India*[31] and then in para 42 arrived at conclusions. The limitations or qualifications to the application of doctrine of 'equal pay for equal work' were also considered in para 42 and from para 43 onwards, Claim for pay parity raised by temporary employees (differently designated as work-charge, daily-wage, casual, ad hoc, contractual and the like) was also considered. After discussion on the point, the matter was concluded thus:-

> **"57.** There is no room for any doubt that the principle of "equal pay for equal work" has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of "equal pay for equal work" has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again."

71. The qualifications to the applicability of the doctrine of 'equal pay for equal work' which have long been recognised and acknowledged in the decisions referred to above are well established. The decision in *Jagjit Singh*[2] again reiterated some of those qualifications. These limitations or qualifications have not been diluted but stand re-inforced.

72. We may, at this stage, deal with the submission advanced on behalf of the State that the decision in *Jagjit Singh* did not take into account the earlier decisions rendered by this Court in *State of Punjab vs. Joginder Singh*[28] and *Zabar Singh vs. The State of Haryana*[29] *and others.*

In the first case, Respondent Joginder Singh was working as a teacher in a District Board High School in Hoshiarpur before 1.10.1957. By reason of government decision taken in September, 1957, which came into effect on 1.10.1957 all teachers like Respondent Joginder Singh, employed in District Board and Municipal Board Schools, became State employees. Before such decision was taken, the State had decided to have two categories of teachers working in the State service. 15% of the total strength of teachers were put in a middle scale of a salary scale while the rest of 85% were put in a lower scale. The former, thus, had better chances of promotion to further levels. After taking over the schools run by District Board and Municipal Boards, which was called

'provincialization' the teachers like Respondent Joginder Singh, though became State employees, were part of cadre of provincialized teachers which was distinct from the cadre of State teachers. A decision was also taken not to make any further appointments in the provincialized cadre and thus said cadre was to be a dying or vanishing cadre. It was also decided that the provincialized cadre would stand bifurcated on the same pattern of 15:85 as was done in the State cadre but any retirements in the provincialized cadre would not result in fresh appointments in that cadre but the appropriate number would get added to the State cadre and fresh appointments would be made only in the State cadre. It must be noted that the employees in both the cadres were given the same pay-scale but their chances of promotion were completely different. The submission that with the passage of time, the strength of provincialized cadre would keep reducing and as such, the chances of promotion and being part of 15% group would keep diminishing and as such the employees in provincialized cadre would be put to prejudice was accepted by the High Court. It was observed by this Court in *State of Punjab vs. Joginder Singh*[28] as under:-

> **"22.** It now remains to consider a point which was raised that the State cannot constitute two Services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that

the constitution of such services would be violative of Article 14. Underlying this submission are two postulates: (*1*) equal work must receive equal pay, and (*2*) if there be equality in pay and work there have to be equal conditions of service. So far as the first proposition is concerned it has been definitely ruled out by this Court in *Kishori Mohanlal* v. *Union of India (1962 SC AIR 1139)* Das Gupta, J. speaking for the Court said:

> "The only other contention raised is that there is discrimination between Class I and Class II officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates Article 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14. The contention that Article 14 of the Constitution has been violated, therefore, also fails."

The second also, is, in our opinion, unsound. If, for instance, an existing service is recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a government servant enters into any contract regulating the conditions of his service he cannot call in aid the constitutional guarantees because he is bound by his contract. But this conclusion, rests on different and wider public grounds viz. that the government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the constitution are not such as to preclude the creation of such services. Besides, there might, for instance, be a temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the Government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by

different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the Constitution. For the purpose of the decision of this appeal the question here discussed is rather academic but we are expressing ourselves on it in view of the arguments addressed to us.

23. Besides the disparity in the chances of promotion between teachers of the provincialised and the State Cadre created by Rule 3 of the impugned rules, the learned Judges of the High Court have held that there was a further disparity by reason of the teachers of the State Cadre being borne on a Divisional list, while under the rules the inter se seniority and promotions of "provincialised" teachers was determined districtwise. It was pointed out by the learned Solicitor-General for the appellant that the State Cadre was kept on a Divisional basis because of the very small number of the members of that Service, whereas it was found administratively inconvenient to have a similar geographical classification of members of the provincialised service and for that reason and no other, districtwise seniority, promotion and transfers was laid down for provincialised teachers. Learned counsel for the respondent did not rely on this reasoning of the learned Judges of the High Court in deciding the case now under appeal. We therefore do not consider it necessary to make any further reference to it.

24. As we have stated already, the two services started as independent Services. The qualifications prescribed for entry into each were different, the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large by the members of each class being different, they started as two distinct classes. If the Government Order of September 27, 1957 did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no

> denial of that freedom guaranteed by the two articles. The foundation therefore of the judgment of the learned Judges of the High Court that the impugned rules created two classes out of what was formerly a single class and introduced elements of discrimination between the two, has no factual basis if, as we hold the order of September 27, 1957 did not effectuate a complete integration of the two Services. On this view it would follow that the impugned rules cannot be struck down as violative of the Constitution.
>
> **25.** Before concluding it is necessary to point out that, as explained earlier, the source of the prejudice caused by the impugned rules to the "provincialised" teachers lies not in the fact that the two cadres were kept separate but on account of the fact that the "provincialised" cadre was intended to be gradually extinguished. The real question for consideration would therefore be whether there was anything unconstitutional in the Government decision in the matter. In other words, had the respondent and his class any fundamental right to have their cadre strength maintained undiminished? This is capable of being answered only in the negative. If their cadre strength became diminished, the proportion thereof who could be in the grade viz. 15% of the total strength being predetermined, there must necessarily be a progressive reduction in the number of selection posts. In other words a mere reduction of the cadre strength would bring about that result and unless the respondent could establish that the Government were bound in Law to fill up all vacancies in the provincialised cadre by fresh recruitment to that cadre and thus keep its strength at the level at which it was on October 1, 1957, he should fail. It is manifest that such a contention is obviously untenable."

73. In the second decision it was contended that the decision of the Constitution Bench in *Joginder Singh's* case required reconsideration and as such a Bench of seven Judges was constituted which dealt with the matter in *Zabar Singh and others vs. The State of Haryana and others*[29].

The discussion in paragraphs 27 to 30, 32 to 33 and 35, 36 and 40 was as under:-

> **"27**. The position which emerges from the aforesaid analysis is that prior to October 1, 1957, the two categories of teachers, those serving in the local bodies schools and those in government schools were distinct. Though the minimum qualifications and scales of pay might have been uniform, there were differences in other matters such as methods of recruitment, retiral benefits, rules for determining seniority, etc. It is also clear that whereas a government school teacher was liable to be transferred to any place throughout the Commissioner's division, a local body teacher could only be transferred within the territorial limits of that body. Appointments in Local Bodies schools, no doubt, were made by Inspectors appointed by government, but they could do so only in consultation with the Chairman or President of such a body. That was the position also in regard to disciplinary matters. Further, although the prescribed minimum qualifications were the same, in point of fact 50% or more of the Local Bodies teachers were non-matriculates and quite a number of such non-matriculate teachers were also without the qualification of Basic Training as against a few non-matriculates and none without such Basic Training in the Government schools. In any event the mere fact that minimum qualifications and scales of pay were the same could not mean, in view of other dissimilar conditions of service, that the two categories of teachers formed one class. Indeed, Mr Tarkunde conceded, as is even otherwise clear, that prior to October 1, 1957, teachers in local bodies and in government schools did not form one class.
>
> **28**. So far as the position on October 1, 1957, is concerned, as already noticed, the Government schools teachers were and continued to be governed by the Rules of 1955, which, no doubt, came into force with effect from May 30, 1957 and which prescribed the minimum qualifications as Matriculation in addition to Basic Training. Government school teachers who, under the 1937-Rules, were recruited by the Director of Public Instruction, were since 1954 selected by the Selection Board after their initial pay had been raised from Rs 47½

to Rs 50 per month. The Local Bodies teachers, on the other hand, were recruited by Inspectors in consultation with the Presidents or Chairmen of those bodies till July 1957 when fresh appointments in vacancies falling in those schools were stopped. Under the new Rules of 1955, Government provided for a selection grade for 15% posts. In fact, such a grade was given to them even before 1955-Rules were framed and the new rules merely continued that benefit. Broadly speaking, the position on October 1, 1957, was that the two categories of teachers formed distinct classes. Though they were performing similar duties, they could not be said to form one integrated class.

29. The question then is, whether in spite of the Government school teachers and the provincialised teachers forming two distinct classes on October 1, 1957, they were, during the period between that date and February 13, 1961, integrated into one class, which was split up into two cadres by those Rules? It would perhaps appear from the statement of the Education Minister made at the Press Conference on the eve of provincialisation that Government had in the beginning the idea of bringing about integration between the two types of teachers. But no such concrete decision was ever taken. A few dates at this stage may clarify the position. As aforesaid, the decision to provincialise the local bodies schools was taken on July 19, 1957. In pursuance of that decision. Government on August 2, 1957, placed a ban against any fresh recruitment of teachers in the Local Bodies schools. On September 27, 1957, the Governor sanctioned the scheme of provincialisation and at the same time sanctioned 20,000 and odd new posts to absorb the existing staff of the provincialised schools. Simultaneously with the provincialisation, the Government on October 1, 1957, gave the same scales of pay to the provincialised teachers as were available to government schools teachers. The problem, however, was how to fix and adjust the provincialised teachers in government service and fix their inter se seniority as also their seniority vis-a-vis the government schools teachers.

30. It is fairly clear from the memorandum published along with 1961-Rules that Government was seeking to discover a proper formula to solve these questions. This process was, it appears, going on since November 23,

1959, when alternative proposals were framed for discussion and those proposals were communicated to the recognised associations of the teachers. Since no agreed consensus was forthcoming from the teachers themselves, Government formed its own decisions as formulated by the Secretary, Education Department in his letter of January 27, 1960, to the Director of Public Instruction. These decisions were made around three basic principles: (*i*) that the two cadres will continue to be separate as before; (*ii*) that the provincialised cadre would be a diminishing cadre; and (*iii*) following upon (*i*) and (*ii*), vacancies arising as a result of promotions, retirements, resignations, etc., in the provincialised cadre should be transferred to the State cadre so that ultimately after about thirty years the provincialised cadre would vanish altogether leaving the State cadre alone in the field. These events leave no doubt that at no time after October 1, 1957, any decision for integrating the two categories of teachers was taken although after October 1, 1957, new teachers were appointed and posted in both the provincialised as well as government schools who carried out the same duties and were given the same scales of pay as the provincialised teachers. But such new teachers had to be deemed to have been appointed in the State cadre by reason of the two principles decided upon by the Government, (*i*) the diminishing character of the provincialised cadre, and (*ii*) that cadre having been frozen from even before October 1, 1957. Thus, the two categories continued to be separate and were never integrated. The Government schools teachers and those appointed after October 1, 1957, were governed by 1955-Rules while the provincialised teachers continued to be presumably governed by the District Boards' Rules until new rules were framed for them by Government. Thus the Rules of 1961 could not be said to have split up the teachers, who formed one integrated cadre into two new cadres. These Rules had to be made as the inter-seniority among provincialised teachers appointed by different local bodies in different districts had to be determined and their position in the service had to be adjusted. The Rules were framed on the principles formulated in the decisions taken by Government on July 27, 1960.

… … …

32. It will be observed that though the provincialised teachers were given the same scales of pay as the teachers in the State cadre, the Rules provided that unlike the latter they could be transferred only within the District where they were serving. Those who were already confirmed prior to the provincialisation were also deemed to be confirmed under these Rules. That meant that for purposes of their seniority their entire service, including service before such confirmation would be taken into account, except that inter se seniority of those promoted to the selection grade was to be determined from the date of their confirmation in that grade.

33. Thus, although the teachers in both the cadres were given the same scales of pay and did the same kind of work and those appointed after October 1, 1957, were posted and worked in the same provincialised schools as teachers in the provincialised cadre, the fact was that the State cadre teachers were and continued to be governed by 1955-Rules while the provincialised teachers were governed by 1961-Rules. This fact, coupled with the fact that one was a district and the other a divisional cadre, meant that the two cadres continued to be separate cadres as before. The principal effect of the new Rules, however, was that the number of posts in the cadre would gradually diminish and together with that the total number of posts in the selection grade, despite the percentage of fifteen remaining intact. But that was the inevitable result of the freezing of the cadre, on the one hand, and its being a diminishing cadre on the other. The State cadre became correspondingly an expanding cadre, the total number of posts for all the schools, Government and provincialised, remaining more or less constant.

… … …

35. The controversy thus really turns on the question whether Government was bound to integrate the two categories of teachers into one and not to continue them as separate cadres as before, and whether its refusal to do so meant violation either of Article 14 or Article 16. It is true that notwithstanding this Court upholding the validity of the 1961-Rules in *Punjab* v. *Joginder*, the then Government of Punjab in 1965 adopted a uniform running scale for both the cadres of Rs 60-Rs 175 with a common 15% for higher grade posts. But that decision has nothing to do with the question of the validity of 1961-Rules, and if those Rules were valid, with the validity of the decision

of the new State of Haryana to implement those Rules instead of the common running scale adopted by Punjab State.

36. The principles on which discrimination and breach of Articles 14 and 16 can be said to result have been by now so well settled that we do not think it necessary to repeat them here once again. As already seen, ever since 1937 and even before, the two categories of teachers have always remained distinct, governed by different sets of rules, recruited by different authorities and having, otherwise than in the matters of pay-scales and qualifications, different conditions of service. This position remained as late as February 13, 1961. On that day whereas the State cadre teachers were governed by 1955-Rules, rules had yet to be framed for the provincialized teachers. The two cadres thus being separate, Government was not bound to bring about an integrated cadre especially in view of its decision of making the provincialized cadre a diminishing one and bringing about ultimately through that principle one cadre only in the field in a phased manner. If through historical reasons the teachers had remained in two separate categories, the classification of the provincialized teachers into a separate cadre could not be said to infringe Article 14 or Article 16. It was also not incumbent on the Government to frame the 1961-Rules uniformly applicable to both the categories of teachers, firstly, because a rule-framing authority need not legislate for all the categories and can select for which category to legislate (See *Sakhawat Ali* v. *State of Orissa (1955) 1 SCR 1004* ; *Madhubhai Amathalal Gandhi* v. *Union of India (1961) 1 SCR 191* and *Vivian Joseph Ferreira* v. *Municipal Corporation of Greater Bombay (1972) 1 SCC 70*) and secondly, because it had already come to a decision of gradually diminishing the provincialized cadre so that ultimately only the State cadre would remain in the service. That was one way of solving the intricate difficulty of inter-seniority. There can be no doubt that if there are two categories of employees, it is within Government's power to recruit in one and not recruit in the other. There is no right in a government employee to compel it to make fresh appointments in the cadre to which he belongs. It cannot also be disputed that Government had the power to make rules with retrospective effect, and therefore, could provide therein that appointments made between October 1, 1957 and

> February 13, 1961, shall be treated as appointments in the State cadre. That had to be done for the simple reason that the provincialized cadre was already frozen even before October 1, 1957 and Government had decided not to make fresh appointments in that cadre since that cadre was to be a diminishing one.
>
> … … …
>
> **40**. Regarding Respondents 37 to 96, all of them were appointed after provincialisation. They are junior in service than the petitioners and some others in the provincialised cadre. But their case is not comparable, for, they were appointed under 1955-Rules and through the recruitment authorities prescribed under those rules i.e. the Selection Board. Obviously, they could not be appointed in the provincialised cadre as that had been frozen even before October 1, 1957. They may have been posted in the provincialised schools but that cannot mean that they were appointed in that cadre. Their appointment being in a separate cadre, it is impossible to say that they were similarly situated. By reason of their recruitment in the State cadre, their conditions of service, including their promotional chances and their seniority would be governed by 1955-Rules and would only be comparable to those in that cadre only."

74. Heavy reliance was placed on the aforesaid decisions by the learned Attorney General and the learned counsel who appeared for the State. It was submitted that though the teachers in provincialized cadre and the State cadre were doing similar duties and discharging identical responsibilities and though, they were as a matter of fact drawing similar pay and emoluments, the services were considered to be distinct and different. The feature that one of the cadres was to be a dying or vanishing cadre was also present in those cases. It was accepted by this Court that the State was within its Rights to let a particular service or

cadre be a dying or vanishing cadre and keep making appointments in other service while maintaining distinct identities of both the services, even when the teachers coming from the both the cadres were doing identical jobs. Though, strictly speaking, those two matters did not involve concept of 'equal pay for equal work', these cases do point that the State can validly make such distinction or differentiation. The learned Attorney General and the learned counsel appearing for the State were, therefore, justified in placing reliance on these two decisions. It is also evident that the subsequent judgments have not noted the decisions of this Court in *Joginder Singh*[28] and *Zabar Singh*[29]. For the purposes of present discussion, we will proceed on the basis that even when the teachers from both the cadres were discharging similar duties and responsibilities, the decision of the State government to maintain different identities of these two cadres was not found objectionable by this Court and further there could be *inter se* distinctions between these two cadres. It is true that both the cadres were enjoying same pay structure but the submission that the chances of promotion ought to be similar was not accepted by the Court.

75. We must also consider observations of this Court in paragraph 12 in its decision in *Secretary, Finance Department and others vs. West*

Bengal Registration Service Association and others[8], which bring out how a 'pay structure' is evolved. The relevant portion of said paragraph was:-

> 12. … … Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (*i*) method of recruitment, (*ii*) level at which recruitment is made, (*iii*) the hierarchy of service in a given cadre, (*iv*) minimum educational/technical qualifications required, (*v*) avenues of promotion, (*vi*) the nature of duties and responsibilities, (*vii*) the horizontal and vertical relativities with similar jobs, (*viii*) public dealings, (*ix*) satisfaction level, (*x*) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. … …"

76. We, therefore, have to proceed on the following basic premise:-

a) It was open to the State to have two distinct cadres namely that of 'Government Teachers' and 'Niyojit Teachers' with Government Teachers being a dying or vanishing cadre. The incidents of these two cadres could be different. The idea by itself would not be discriminatory.

b) The pay structure given to the Niyojit Teachers was definitely lower than what was given to Government Teachers but the number of

Government Teachers was considerably lower than the number of Niyojit Teachers.

As stated above, presently there are just about 66,000 Government Teachers in the State as against nearly 4 lakh Niyojit Teachers. There is scope for further appointment of about 1 lakh teachers which could mean that as against 5 lakh teachers the number of State Teachers would progressively be going down.

c) The parity that is claimed is by the larger group with the lesser group as stated above which itself is a dying or a vanishing cadre.

d) The mode of recruitment of Niyojit Teachers is completely different from that of the Government Teachers as stated above.

77. If a pay structure is normally to be evolved keeping in mind factors *such as* "method of recruitment" and "employer's capacity to pay" and if the limitations or qualifications to the applicability of the doctrine of 'equal pay for equal work' admit *inter alia* the distinction on the ground of process of recruitment, the stand taken on behalf of the State Government is not unreasonable or irrational. Going by the facts indicated above and the statistics presented by the State Government, it was an enormous task of having the spread and reach of education in the remotest corners.

Furthermore, the literacy rate of the State which was lagging far behind the national average was also a matter which required attention. The advances made by the State on these fronts are quite evident. All this was possible through rational use of resources. How best to use or utilise the resources and what emphasis be given to which factors are all policy matters and in our considered view the State had not faltered on any count. As laid down by this Court in the decisions in *Joginder Singh*[28] and *Zabar Singh*[29], the State was justified in having two different streams or cadres. The attempt in making over the process of selection to Panchayati Raj Institutions and letting the cadre of State Teachers to be a dying or vanishing cadre were part of the same mechanics of achieving the spread of education. These issues were all part of an integrated policy and if by process of judicial intervention any directions are issued to make available same salaries and emoluments to Niyojit Teachers, it could create tremendous imbalance and cause great strain on budgetary resources.

78. It is true that the budgetary constraints or financial implications can never be a ground if there is violation of Fundamental Rights of a citizen. Similarly, while construing the provisions of the RTE Act and the Rules framed thereunder, that interpretation ought to be accepted which would make the Right available under Article 21A a reality. As the text of the

Article shows the provision is essentially child-centric. There cannot be two views as regards the point that Free and Compulsory Education ought to be quality education. However, such premise cannot lead to the further conclusion that in order to have quality education, Niyojit Teachers ought to be paid emoluments at the same level as are applicable to the State Teachers. The modalities in which expert teachers can be found, whether by giving them better scales and/or by insisting on threshold ability which could be tested through examinations such as TET Examination are for the Executive to consider.

79. In our considered view, there has been no violation of the Rights of the Niyojit Teachers nor has there been any discrimination against them. We do not find that the efforts on part of the State Government could be labelled as unfair or discriminatory. Consequently, the submissions as to how the funds could and ought to be generated and what would be the burden on the State Government and the Central Government, do not arise for consideration.

In our view, great strides have been made by the State in the last decade. It has galvanised itself into action and not only achieved the objectives of having schools in every neighbourhood but has also succeeded in increasing the literacy rate. It has also succeeded in having

more girl children in the stream of education and consequently the TFR, as indicated above, has also improved to a great extent. If these are the benefits or rewards which the society stands to gain and achieve, the State ought to be given appropriate free play. The tabular charts placed on record by the State also show continuous improvements made by the State in the packages made available to the Niyojit Teachers. Said attempts also show that the State is moving in the right direction and the gap which is presently existing between the Government Teachers and the Niyojit Teachers would progressively get diminished. Considering the large number of Niyojit Teachers as against the Government Teachers, the steps taken by the State as evident from various tabular charts presented by it are in the right direction. At this juncture, any directions as have been passed by the High Court, may break even tempo which the State has consistently been able to achieve.

80. At the same time, the submission that at the initial stage the Niyojit Teachers are given such emoluments which are lesser than peons and clerks in the same school is a matter which requires attention. It is true that after having put in two years of service, the emoluments made available to Niyojit Teachers show some improvements but the disparity at the initial stage is more than evident. The State may certainly be entitled to devise a

pay structure for Niyojit Teachers and the courts may not interfere in policy matters but, if there is an imbalance of the nature as presented before this Court, the matter raises concern. The teachers must be entitled to decent emoluments. In the chart referred to in para 32(c) above, after two years of service with proposed enhancement as per recommendations of the three member Committee the scales payable to Niyojit Teachers would show some increase as against those in respect of peons and clerks. The State may consider raising the scales of Niyojit Teachers at least to the level suggested by the Committee, without insisting on any test or examination advised by the Committee. Those who clear such test or examination, may be given even better scales. This is only a suggestion which may be considered by the State.

81. In the circumstances, we allow these appeals preferred by the State, set aside the judgment and order under appeal and dismiss the Writ Petitions preferred on behalf of Niyojit Teachers.

82. In the end, we must express our sincere gratitude for the assistance rendered by all the learned counsel who appeared in the matters. We are grateful to all the learned counsel.

83. These appeals are allowed in aforesaid terms. No order as to costs.

…….J.
(Abhay Manohar Sapre)

…….J.
(Uday Umesh Lalit)

New Delhi;
May 10, 2019.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4862 OF 2019
(Arising out of S.L.P.(C) No.20 of 2018)

The State of Bihar & Ors. ….Appellant(s)

VERSUS

The Bihar Secondary Teachers Struggle Committee, Munger & Ors. ….Respondent(s)

WITH

CIVIL APPEAL No.4872 OF 2019
(Arising out of S.L.P.(C) No.708 of 2018)
CIVIL APPEAL No.4867 OF 2019
(Arising out of S.L.P.(C) No.238 of 2018)
CIVIL APPEAL No.4866 OF 2019
(Arising out of S.L.P.(C) No.242 of 2018)
CIVIL APPEAL No.4864 OF 2019
(Arising out of S.L.P.(C) No.169 of 2018)
CIVIL APPEAL No.4865 OF 2019
(Arising out of S.L.P.(C) No.162 of 2018)
CIVIL APPEAL No.4869 OF 2019
(Arising out of S.L.P.(C) No.254 of 2018)
CIVIL APPEAL No.4863 OF 2019
(Arising out of S.L.P.(C) No.164 of 2018)

CIVIL APPEAL No.4868 OF 2019
(Arising out of S.L.P.(C) No.251 of 2018)
CIVIL APPEAL No.4870 OF 2019
(Arising out of S.L.P.(C) No.240 of 2018)
AND
CIVIL APPEAL No.4871 OF 2019
(Arising out of S.L.P.(C) No.572 of 2018)

J U D G M E N T

Abhay Manohar Sapre, J.

1. I have had the advantage of going through an elaborate, well considered and scholarly drafted judgment proposed by my esteemed brother Justice Uday Umesh Lalit.

2. I entirely agree with the reasoning and the conclusion, which my erudite brother has drawn, which are based on remarkably articulate process of reasoning. However, having regard to the nature of the controversy involved in these appeals, which was ably argued by senior lawyers in their respective submissions, I wish to add a few words of mine.

3. This case reminds me of the apt observations made by an eminent Judge of this Court, Vivian Bose J., in his concurring opinion in the case of **Bidi Supply Co. vs. Union of India & Ors.**, AIR 1956 SC 479. The learned Judge made these observations while examining the object and the scope of Article 14 of the Constitution of India.

4. In his immaculately and distinctive style of writing, the learned Judge made the observations in paras 15 and 16, which read as under:

> **"15. With the utmost respect all this seems to me to break down on a precise analysis, for even among equals a large discretion is left to judges in the matter of punishment, and to the police and to the State whether to prosecute or not and to a host of officials whether to grant or withhold a permit or a licence. In the end, having talked learnedly round and around the article we are no wiser than when we started and in the end come back to its simple phrasing—**
>
> > **"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."**
>
> **16. The truth is that it is impossible to be precise, for we are dealing with intangibles and though the results are clear it is impossible to pin the thought down to any**

precise analysis. Article 14 sets out, to my mind, an attitude of mind, a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large of something that exists and which is very real but which cannot be pinned down to any precise analysis of fact save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises. (See on this point Lord Sumner's line of reasoning in *Bowman vs. Secular Society Ltd., 1917 AC 406*. Always there is in these cases a clash of conflicting claims and it is the core of the judicial process to arrive at an accommodation between them. Anybody can decide a question if only a single principle is in issue. The heart of the difficulty is that there is hardly any question that comes before the Courts that does not entail more than one so-called principle. As Judge Leonard Hand of the United States Court of Appeals said of the American Constitution."

5. The aforesaid observations of Justice Vivian Bose, therefore, should always be kept in mind while deciding the question of the nature arising in every case including the one at hand.

6. As rightly held by brother Lalit J., the issue involved in these appeals is answered by two decisions of the Constitution Bench of this Court, namely, **State of Punjab vs. Joginder Singh**, 1963 Suppl(2) SCR 169 and **Zabar Singh & Ors. vs State of Haryana and Ors.** (1972) 2 SCC 275.

7. In my view also, the issue, which is subject matter of these appeals, has to be decided keeping in view the law laid down by this Court in the aforementioned two decisions of the Constitution Bench.

8. I may, at this stage, refer to a decision in **N. Meera Rani vs. Govt. of Tamil Nadu & Anr.,** AIR 1989 SC 2027. In this case, it was argued that the question involved in the appeal is governed by the decision of the Constitution Bench in **Rameshwar Shaw vs. District Magistrate, Burdwan,** AIR 1964 SC 334. It is pertinent to mention that the same question was also decided by this Court but it was decided subsequent to the decision of the

Constitution Bench in many other cases. The later decisions on the same question were, however, rendered by the Benches comprised of lesser number of the Judges.

9. Justice J.S. Verma (as His lordship then was), speaking for Three Judge Bench, held that the question involved in the appeal before them has to be, therefore, decided in the light of law laid down by the Constitution Bench because firstly, it is a decision rendered by the Constitution Bench; Secondly, it is prior in point of time; and thirdly, the law laid down in later decisions has to be read in the light of the law laid down by the Constitution Bench. This is what His Lordship said in para 13:

> **"13. We may now refer to the decisions on the basis of which this point is to be decided. The starting point is the decision of a Constitution Bench in *Rameshwar Shaw* v. *District Magistrate, Burdwan, AIR 1964 SC 334*. All subsequent decisions which are cited have to be read in the light of this Constitution Bench decision since they are decisions by Benches comprising of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of**

the Constitution Bench in *Rameshwar Shaw case*."

10. Keeping in view the law laid down in **N. Meera Rani** (supra), I am of the view that the question involved in these appeals needs to be decided in the light of the law laid down by two decisions of the Constitution Bench rendered in **Joginder Singh** (supra) and **Zabar Singh** (supra).

11. Though the learned counsel for the respondents made sincere attempts on their part in contending that the law laid down in **Joginder Singh** (supra) and **Zabar Singh** (supra) has no application to the question involved in these appeals because the facts involved therein are not similar to the facts involved in these appeals, we are afraid, we cannot accept this submission. In my opinion, it is not so.

12. Brother Lalit,J. has dealt with this question elaborately in paras 72 to 74 of his opinion. I

respectfully concur with his reasoning contained therein.

13. I am also, therefore, of the view that the appeals deserve to be allowed and are accordingly allowed. The impugned judgment is set aside and the writ petitions filed by the respondents before the High Court are dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
May 10, 2019